

<p>WELD COUNTY DISTRICT COURT, COLORADO 915 10<sup>th</sup> Street, Greeley, CO 80634</p>	
<p>Plaintiffs: ANDREW S. BROWN, D.O., and BELMARIE ROMAN-MARADIAGA, M.D., k/n/a BEL REID, M.D., for themselves and on behalf of all others similarly situated,</p> <p>v.</p> <p>Defendants: BANNER HEALTH, an Arizona nonprofit corporation, and BANNER MEDICAL GROUP COLORADO, a Colorado nonprofit corporation.</p>	<p>DATE FILED: January 4, 2021 6:02 PM FILING ID: 53990D51502D5 CASE NUMBER: 2020CV30620</p> <p>▲ COURT USE ONLY ▲</p>
<p>ATTORNEYS FOR PLAINTIFFS:</p> <p>Brian K. Matisse, No. 33755   <a href="mailto:bmatise@burgsimpson.com">bmatise@burgsimpson.com</a>          Lisa R. Marks, No. 31683   <a href="mailto:lmarks@burgsimpson.com">lmarks@burgsimpson.com</a>          Nelson Boyle, No. 39525   <a href="mailto:nboyle@burgsimpson.com">nboyle@burgsimpson.com</a>          Michael A. Mauro, No. 48009   <a href="mailto:mmauro@burgsimpson.com">mmauro@burgsimpson.com</a>          Burg Simpson Eldredge Hersh &amp; Jardine, P.C.          40 Inverness Drive East          Englewood, Colorado, 80112          Telephone: (303) 792-5595</p>	<p>Case No.: 2020CV30620</p> <p>Div.: 5</p>
<p align="center"><b>SECOND AMENDED CLASS COMPLAINT AND DEMAND FOR JURY TRIAL</b></p>	

Plaintiffs, Andrew S. Brown, D.O., and Belmarie Roman-Maradiaga, M.D., k/n/a Bel Reid, M.D., by and through their attorneys Burg Simpson Eldredge Hersh & Jardine, P.C., submit this Second Amended Class Complaint and Demand for Jury Trial, individually, and on behalf of all others similarly situated and allege against Defendants, Banner Health and Banner Medical Group Colorado as follows:

**I. NATURE OF THE ACTION**

1. The named Plaintiffs are members of a class of Colorado physicians (the “Class Members” or the “Colorado Physicians”), who were employed with Defendant Banner Medical Group Colorado (“BMGC”) between 2016-2018 (the “Relevant Period”). BMGC is the Colorado-based physician group for Defendant Banner Health (“Banner”).

2. Before and during the Relevant Period, the Defendants induced the Plaintiffs into accepting employment with promises of earned incentive compensation (the “Productivity Bonus”), as governed by each Plaintiff’s Physician Employment Agreement.

During the Relevant Period, using BMGC staff or computer systems, Defendants manipulated the billing records and data of the Plaintiffs. As a result of Defendants' manipulation of those records or that data, Defendants retained a financial benefit when they paid the Plaintiffs smaller Productivity Bonuses than what Defendants promised to the Plaintiffs before they were hired and in violation of the terms of the Plaintiffs' respective Physician Employment Agreements.

3. The Plaintiffs continuously experienced large discrepancies in the medical records/billing data they had submitted through Banner's Electronic Medical Records System, based on patients they cared for and work performed. Those discrepancies in the information used to determine Productivity Bonuses for the Plaintiffs resulted in a reduction of the actual compensation the Plaintiffs received for their professional services. Although Defendants received numerous requests from the Plaintiffs for information/data and reconciliation of the billing and compensation issues, Defendants ignored or stonewalled those requests. For themselves, and on behalf of similarly situated Class Members, Plaintiffs now bring this lawsuit against the Defendants for breach of contract (or, alternatively, unjust enrichment), for fraudulent concealment, and for fraudulent inducement.

## **II. PARTIES**

### **A. Class Representatives**

4. Plaintiff, Andrew S. Brown, D.O. ("Brown") is an individual who resides at 631 Yukon Court, Windsor, Colorado 80550. Brown is a physician who is board certified in Internal Medicine with experience in critical care. Brown was employed as a Hospitalist with BMGC, an affiliate of Banner, from February 1, 2016 until his resignation effective November 8, 2018.

5. Plaintiff, Belmarie Roman-Maradiaga, M.D., k/n/a Bel Reid, M.D. ("Reid") is an individual who resides at 3732 Crescent Drive, Fort Collins, Colorado 80526. Reid is a physician who is board certified in Internal Medicine. Reid was employed as a Hospitalist with BMGC, an affiliate of Banner, from June 1, 2016 until her resignation effective January 2, 2019.

### **B. Defendants**

6. The term Defendants refers to the Defendants named herein jointly and severally.

7. When reference is made in this Complaint to any act or omission by either of the Defendants, it shall be deemed that the officers, directors, agents, employees, or representatives of the Defendants committed or authorized such act or omission, or failed to adequately supervise or properly, control or direct their employees while engaged in the management, direction, operation, or control of the affairs of Defendants, and did so while acting within the scope of their duties, employment or agency.

8. Upon information and belief, the Defendants are responsible, intentionally or in some actionable manner, for the events and happenings referred to herein, and caused and continue to cause damages to Plaintiffs, as alleged, either through the Defendants' own conduct or through the conduct of their agents, representatives, or employees, or due to the ownership, maintenance, or control of the instrumentality causing them damages, or in some other actionable manner.

9. Defendant Banner is a nonprofit corporation organized under the laws of the State of Arizona with its principal place of business located at 2901 North Central Avenue, Suite 160, Phoenix, Arizona 85012.

10. Banner is one of the largest nonprofit health care systems in the country providing health care entities and services in six states, including Colorado.

11. In Colorado, Banner operates five hospitals, several health centers and clinics, and is one of Northern Colorado's largest employers.

12. Banner maintains a corporate center located at 7251 West 4<sup>th</sup> Street, Greeley, Colorado 80634, housing offices and employees for physician billing, BMGC, and Banner staffing.

13. Banner Medical Group ("BMG") was established in 2009 as Banner's employed Physician Provider Group in each state where Banner operates. BMGC, which on information and belief is a subsidiary of BMG, was incorporated as a nonprofit corporation in Colorado on December 23, 2009, with its principal place of business located at 1801 16<sup>th</sup> Street, Greeley, Colorado 80631.

14. BMGC is Banner's employed physician provider group, licensed in the State of Colorado, and organized exclusively for the benefit of, to perform the functions of, to operate as an integral part of, and to carry out the purposes of Banner.

15. BMGC either moved its principal place of business or maintains an office in the Banner corporate center located at 7251 West 4<sup>th</sup> Street, Greeley, Colorado 80634 and/or 2923 Ginnala Drive, Loveland, Colorado 80538.

### **III. JURISDICTION AND VENUE**

16. Plaintiffs reallege and incorporate by this reference the averments contained in paragraphs 1 through 15 as if fully set forth in this paragraph.

17. This Court has subject matter jurisdiction over this action pursuant to the Constitution of the State of Colorado, Article VI, Section 9.

18. This Court has personal jurisdiction over Defendant Banner because Banner purposefully availed itself of the privilege of conducting business in the State of Colorado by operating its health system, hospitals, health centers and clinics, and this litigation arises out of Banner's forum-related contacts. C.R.S. § 13-1-124.

19. This Court has personal jurisdiction over Defendant BMGC because it is a nonprofit corporation organized under the laws of the State of Colorado and operates its business in Colorado and for the benefit of, to perform the functions of, and to carry out the purposes of Banner. C.R.S. § 13-1-124(1)(a).

20. Plaintiffs and BMGC also entered and executed the Physician Employment Agreement stating that any lawsuit to enforce the provisions of the Agreement must be brought exclusively in the Weld County District Court or the United States District Court for the District of Colorado, Denver Division. Accordingly, this action has been brought in the Weld County District Court.

21. Venue is proper in Weld County, Colorado pursuant to C.R.C.P. 98(c)(1). Defendants Banner and BMGC reside or may be found in Weld County at all times relevant to this Complaint and/or 98(c)(4) because this action involves a contract for professional services performed in Weld County.

22. Weld County is the county designated in the Physician Employment Agreement, so venue in this court is proper for that reason, as well.

### **IV. GENERAL ALLEGATIONS**

23. Plaintiffs reallege and incorporate by this reference the averments contained in paragraphs 1 through 22 as if fully set forth in this paragraph.

**A. The History of Banner Health and Banner Medical Group.**

24. Banner was created on September 1, 1999, as a result of a merger between two nonprofits, Samaritan Health System and Lutheran Health System.

25. Since 1999, Banner has grown into one of the largest, comprehensive health care systems in the United States.

26. Banner's corporate headquarters is located in Phoenix, Arizona, and it operates hospitals and other related health entities in six states: Arizona; California; Colorado; Nebraska; Nevada; and Wyoming.

27. In Colorado, Banner operates the following five hospitals: Northern Colorado Medical Center ("NCMC") in Greeley; McKee Medical Center ("MMC") in Loveland; Banner Fort Collins Medical Center ("FCMC"); East Morgan County Hospital ("Morgan"); and Sterling Regional Med Center ("Sterling").

28. Banner also operates several health centers and clinics in Colorado.

29. Currently, Banner has more than 50,000 employees and is one of the largest employers in Northern Colorado.

30. BMGC physicians serve patients in a variety of care settings.

31. BMGC primary care providers, such as pediatricians, internists, family medicine physicians, and obstetricians/gynecologists provide care for patients at Banner Health Centers and Clinics.

32. BMGC specialists provide care for patients in both hospital and clinical settings.

**B. BMGC's Physician Employment Agreement Provided Physicians a Salary Plus Productivity Bonus Compensation Based on Performed Current Procedural Terminology (CPT) Codes with Assigned Relative Value Units (RVUs).**

33. To recruit qualified physicians, including Plaintiffs, Banner and BMGC offer and have offered Physicians a competitive salary plus incentives, such as signing bonuses and productivity pay, paid malpractice insurance, flexible scheduling, opportunities for

leadership, clinical, academic and operational roles, Continuing Medical Education (“CME”) allowance, valuable benefits package, and/or relocation assistance.

34. On or about May 8, 2015, Brown attended a job interview and site visit with the Defendants for a position as a board-certified Hospitalist physician. Brown met with Marcus Reinhardt, M.D. (“Reinhardt”) and Carol Runge (“Runge”) for his interview.

35. During the interview, there was a discussion regarding compensation and Reinhardt promoted Defendants’ RVU Productivity Bonus structure as an incentive to accept their offer of employment.

36. Reinhardt told Brown that once physicians hit the 3500 RVU threshold, and most physicians met the threshold because they were so busy with work, the physicians were paid \$37.00 per RVU.

37. On the evening of May 8, 2015, Brown attended a dinner at Bonefish restaurant with Reinhardt, Banner’s Divisional Medical Director, Western Division, Edward (“Ted”) Norman, M.D. (“Norman”), and Barbara Emerson, M.D. (“Emerson”).

38. At the dinner, there was a group discussion regarding physician compensation.

39. Reinhardt, Norman, and Emerson promoted the RVU Productivity Bonus as an incentive for Brown to accept employment with the Defendants.

40. Reinhardt, Norman, and Emerson represented to Brown that the physicians were so busy with work the RVU Productivity Bonus compensation could be \$20,000.00 per quarter on top of their salary pay.

41. Brown specifically asked about physicians receiving one hundred percent (100%) of the amount of the RVU compensation.

42. Reinhardt, Norman, or Emerson responded “yes” to that question.

43. Reinhardt, Norman, and Emerson told Brown that physicians received one hundred percent (100%) of the amount of the RVUs even if hospital staff were working with the physicians.

44. On May 27, 2015, Brown received a letter from Matthew J. English (“English”), a Banner Health Physician Recruiting Senior Consultant, with “confirmation

of our discussion regarding your proposed employment as a board eligible/board certified Hospitalist with Banner Health.”

45. English’s letter to Brown included discussion of “Incentives provided,” including the “Productivity Bonus.”

46. English’s letter to Brown stated that RVU compensation would be paid to Brown at \$37.00 per RVU for greater than 3,500 RVUs.

47. Brown also received Defendants’ 2015 Physician Benefits Overview and a BMG Hospitalist Compensation Model which stated that RVUs would be paid to physicians at \$37.00 per unit after they reach the required 3,500 threshold.

48. As discussed more fully below, Brown’s Physician Employment Agreement included provisions for the RVU Productivity Bonus compensation at \$37.00 per unit, and Brown relied on Defendants’ representations and promises in accepting his employment and Agreement.

49. On or about January 8, 2016, Reid attended a job interview and site visit with the Defendants for a position as a board-certified Hospitalist physician.

50. Before her interview and site visit, Reid already had extensive discussions with Norman regarding the Defendants’ business philosophy and Hospitalist practice.

51. The base compensation Defendants offered would be lower than her current employment in Wisconsin, but Norman emphasized Defendants’ RVU Productivity Bonus compensation at \$37.00 per RVU to Reid as a salary incentive that would equalize the difference between her then current compensation in Wisconsin and what Banner promised to pay.

52. On the morning of January 8, 2016, Reid met with Marsha Henke, M.D. (“Henke”), who gave her a tour of NCMC.

53. After the tour of the hospital, Reid attended a lunch at the Hospitalist’s office in Greeley, Colorado, with Henke, Reinhardt, Runge, Matthew Remakus, M.D., Miguel Salgado, M.D., and other physicians and staff members.

54. During discussions with Henke and Reinhardt that day, Reid was told that Defendants’ RVU Productivity Bonus compensation structure of \$37.00 per RVU provided

physicians the opportunity of making extra money once the 3,500 RVU threshold was achieved.

55. On January 29, 2016, Reid received a letter from English with “confirmation of our discussion regarding your proposed employment as a board eligible/board certified Hospitalist with Banner Health.”

56. English’s letter to Reid included discussion of “Incentives provided,” including the “Productivity Bonus.”

57. English’s letter to Reid states that RVU compensation would be paid to Reid at \$37.00 per RVU for greater than 3,500 RVUs.

58. As discussed more fully below, Reid’s Physician Employment Agreement included provisions for the RVU Productivity Bonus compensation at \$37.00 per unit, and Reid relied on Defendants’ representations and promises in accepting her employment and Agreement.

59. Colorado Physicians employed with Banner, including Plaintiffs, entered into the Physician Employment Agreement (“Agreement”) with BMGC.

60. Brown signed an Agreement with BMGC, effective February 1, 2016.

61. Reid signed an Agreement with BMGC, effective June 1, 2016.

62. The copies of the Agreement signed by Brown and Reid are identical in all ways, except that Brown’s includes Brown’s name and signature in appropriate places and Reid’s includes Reid’s name and signature in appropriate places.

63. Terms of the Agreement provide in pertinent part:

**RECITALS:**

A. The Medical Group operates physician practices and offers a variety of primary and specialty physician services to patients in the communities served by Banner Health.

B. Physician is trained in [the Specialty] and is qualified to provide the services outlined in this Agreement.



C. The parties desire to enter into this Agreement to establish the terms and conditions of Physician's employment by the Medical Group.

**I. EMPLOYMENT.**

- 1.1 Employment and Term. The Medical Group employs Physician, and Physician accepts employment to practice medicine in the Specialty on behalf of the Medical Group on an uninterrupted basis subject to the terms and conditions of this Agreement and satisfaction of the conditions in Article VIII[.]
- 1.2 Physician's Duties. Physician's principal duties are to provide medical care in the Specialty and to perform the duties as set forth in the applicable Role Summary, as amended from time to time by the Medical Group. Physician agrees to establish regular practice hours and to assist in providing call coverage for weekends, nights and holidays, as reasonably determined by the Medical Group[.]
- 1.3 Best Efforts and Exclusivity. The scope of Physician's employment by the Medical Group extends to all activities of Physician related to the practice of medicine (including teaching, consulting, speaking, lecturing, writing, research, expert consultation and witness services, and the development of sale of medical, healthcare-related, nutritional or other products related to the practice of medicine in Physician's Specialty or Physician's status as a physician). All fees, revenues and proceeds derived from such activities (including all Secondary Professional Activities as defined in Section 3.5) are the property of the Medical Group, unless an activity is approved in advance in writing by the Medical Group and determined by the Medical Group to be outside the scope of Physician's employment pursuant to Section 4.3. Physician will devote Physician's full time and effort to performing the duties set forth in this Agreement, to the exclusion of any other medical practice. The Medical Group must give its prior approval in each instance before Physician engages in any other professional activities whether compensated or uncompensated (including any Secondary Professional Activities, as defined in Section 3.5).

\* \* \*

### **III. PHYSICIAN TOTAL REWARDS PROGRAM.**

- 3.1 Compensation. For all services rendered by Physician pursuant to this Agreement (other than those Secondary Professional Activities that are determined by the Medical Group to generate additional compensation for Physician), the Medical Group will initially pay Physician pursuant to Addendum 3.1 attached (the “Compensation Plan”). The Medical Group may modify the Compensation Plan in its sole discretion from time to time; however, any modification is prospective only, does not affect any compensation earned prior to its effective date and must be communicated to Physician at least 90 days prior to becoming effective. If the modification is effective on any date other than a year-end, Physician’s performance under the prior compensation plan will be pro-rated to the effective date of the modification.

\* \* \*

### **IV. OTHER OBLIGATIONS OF PHYSICIAN.**

- 4.1 Confidential Information. During and after the Term, Physician must keep all Confidential Information (as defined below) secret and may not use Confidential Information for any purpose other than Physician’s performance as an employee of the Medical Group. Physician must not disclose Confidential Information to anyone outside the Medical Group or Banner Health except: (a) as required by court order or process after the Medical Group has been afforded reasonable opportunity to contest such order or process; (b) to the extent the information already is in the public domain other than through wrongful disclosure by Physician; or (c) upon the express prior written of the Medical Group. The “Confidential Information” to which this Section 4.1 applies includes, without limitation, all trade secrets, patient lists, pricing policies, operational methods, marketing plans or strategies, product development techniques or plans, business acquisition plans, clinic development plans, marketing plans, new personnel acquisition plans, administrative and clinical policies, procedures, manuals, protocols and reports, and other business intelligence relating to the operations of the Medical Group or Banner Health.

\* \* \*

- 4.6 Use of Information Technology. Physician will appropriately utilize electronic medical record systems of the Medical Group and Banner Health facilities in order to improve patient safety, support the care and treatment of patients, and assist in enhancing the quality of care delivered to patients. Physician agrees to use Physician’s best efforts to meet all applicable targets for utilization of such systems as may be established by the Medical Group or the Banner Health Care Management Council.
- 4.7 Participation in Electronic Health Record Meaningful Use Program. Physician will take such steps as are reasonably requested in order for the Medical Group to realize, to the greatest extent possible, the benefits of the electronic health record meaningful use program, created by the American Recovery and Reinvestment Act of 2009 (the “EHR Meaningful use Program”), including, but not limited to, participating in the EHR Meaningful use Program as an Eligible Professional (as defined in 42 CFR §495.100 or § 495.302, as applicable), using certified electronic health record technology, and providing such truthful attestations of adoption, implementation, upgrading and meaningful use of such technology as requested or required by the Medical Group or any federal or state authority. Physician reassigns to the Medical Group the right to receive any payments made in connection with Physician’s participation as an Eligible Professional in the EHR Meaningful Use Program. Physician acknowledges that Physician’s compensation will not be adjusted in any way on account of the Medical Group’s Receipt of any such payments, except as may be specifically provided in a separate written agreement between the Medical Group and Physician or in any Medical Group incentive plan.

### **ADDENDUM 3.1 COMPENSATION PLAN**

1. Base Salary. Physician will receive [a base salary per year], payable in bi-weekly installments[.] Physician will be employed by the Medical Group as a 1.0 full time equivalent.
2. Productivity Bonus. In addition to the base salary, Physician will be eligible to receive a production bonus (the “Productivity Bonus”)

based upon the total number of wRVUs personally performed by Physician on an annual basis, as determined by recorded CPT codes for Physician's professional services with assigned wRVUs. The following matrix sets forth the compensation to be paid to Physician for each wRVU personally performed by Physician on an annual basis, based upon the total number of wRVUs performed by Physician during each year of the Term:

Total Number of wRVUs (as determined on an annual basis)	Payment per wRVU
0-3,500	\$0.00
> 3,500	\$37.00

The Productivity Bonus will be determined on an annual basis, commencing as of the first day of each calendar year during the Term. Periodic payments of the Productivity Bonus may be made on a quarterly basis or on such other payment schedule as may be mutually agreed to by the parties; provided, however, that during the period from the Commencement Date until December 31<sup>st</sup> of the same year, the Productivity Bonus will be prorated based upon the number of months actually worked by Physician. If any periodic determination results in a payment of the Productivity Bonus to be made to Physician by the Medical Group, an agreed-upon percentage of the amount of such payment will be made to Physician within 30 days of the end of the applicable period. If any periodic determination results in a negative amount, such amount will be offset against future payments of the Productivity Bonus. The last periodic payment of the Productivity Bonus, which will include the final annual reconciliation, will be made within 30 days of the end of the applicable calendar year. If, after such final annual reconciliation, it appears that, as a result of any periodic payments, Physician has received more than the amount of the Productivity Bonus that Physician was entitled to receive for subject calendar year, Physician will pay to the Medical Group the excess amount within 30 days after written demand for such payment. If Physician fails to pay the excess amount within such 30 day period,

the Medical Group will have a right of offset and may set-off all or any portion of the excess amount against any sums owed to Physician by the Medical Group, including amounts owed to Physician under this Agreement.

**C. Defendants Engaged in a Pattern of Fraudulent Conduct Which Altered Physician Medical/Billing Records and Failed to Compensate RVU Productivity Compensation According to the Agreement.**

**(1) Defendants Implemented Billing Procedures for Submitting Physician Charges to Insurances and/or Self-Pay Patients.**

64. Banner facilities, including but not limited to its Colorado hospitals, health centers and clinics, are all Electronic Health Records facilities.

65. Under the Agreement and according to Banner/Physician practices, Physicians were required to use and participate in Banner's Electronic Health Record Program. *See above*, Sections 4.6-4.7.

66. On information and belief, the electronic system mentioned in the previous two paragraphs is and was referred to as the "Cerner System" at all pertinent times.

67. After providing care to a patient, the Physicians would complete the appropriate medical record or notation and enter the diagnostic or procedure CPT Codes into the Cerner System based on the work performed.

68. At all pertinent times, the Cerner System was utilized to track all Physician-Patient activity.

69. At all pertinent times, Hospitalist Physicians utilized a Patient Rounding List Spreadsheet through the electronic system.

70. At all pertinent times, after physicians, such as Brown and Reid, entered patient medical data into the Cerner System, Defendants' coding and billing staff would handle the creation and submission of medical claims/billing/invoices to various insurance companies, other payors, and self-pay patients.

71. Banner's Corporate Center, located in Greeley, Colorado, houses the offices and employees for physician billing, BMGC, and Banner staffing.

72. On information and belief, at all pertinent times, Defendants' Coding and Physician Billing Departments create, submit, or manage physician clinic charges and billing/claims/invoices to insurance companies, other payors, and self-pay patients.

73. On information and belief, at all pertinent times, the Physician Billing Department is divided into different sections and comprised of Defendants' staff for Submission of Claims, Medicare Claims, Medicaid Claims, Commercial Insurance Claims, Self-Pay Patient Bills, Credits, Cash Control, and Deposits/Checks.

74. On information and belief, at all pertinent times, Defendants employ separate Coding and Physician Billing staff to handle charges and billing/claims for each Physician Specialty Group, for example, Hospitalists and Surgeons.

75. On information and belief, at all pertinent times, billing for hospital charges is and was handled by Banner located in Phoenix, Arizona.

76. At all pertinent times, Defendants' staff receive ongoing training from supervisors regarding appropriate procedures for handling the Physician charges and billing/claims.

77. At all pertinent times, according to the training procedures, Physician charges and bills/claims submitted to insurance companies, other payors, or self-pay patients would name the Physician as the Billing or Rendering Physician Provider.

78. For purposes of submitting Physician charges and bills/claims to insurance companies, other payors, or self-pay patients, the billing staff received billing information from the medical coding staff.

79. On information and belief, at all pertinent times, the Physicians' National Provider Identifier ("NPI") was required for all Physician Providers and billing.

80. On information and belief, at all pertinent times, in any situation, where there was an insurance question or change needed, staff were to consult the Physician or Physician's Practice Group to discuss the insurance issue and obtain permission to resolve the issue or make the necessary change.

81. On information and belief, at all pertinent times, lower-level salaried employees such as Resident Physicians ("Resident"), Physician Assistants ("PA"), or Nurse Practitioners ("NP") were supervised under the Physician Providers such as Brown and Reid.

82. Physicians were required under their guidelines to see patients in person daily even if the patients were first seen by a Resident, PA, or NP.

**(2) *Banner/BMGC Implemented Procedures which Fraudulently Altered Physician Billing/Charges for Calculating Productivity Compensation.***

83. On information and belief, at all pertinent times, Defendants' process for providing credit to the Physicians for their billing/charges and compensating them their monthly Productivity Bonus, while involving the same Physician billing data, was a separate process from submitting billing/claims to medical insurance companies, other payors, or self-pay patients.

84. On information and belief, at all pertinent times, Defendants' Finance Department, administration, or other staff or agents were responsible for calculating and ensuring proper credit to Physicians for their monthly RVU Productivity Bonus compensation.

85. Under the parties' Agreement, BMGC was required to compensate Physicians with their monthly Productivity Bonus based upon the number of RVUs as determined by the Physicians' professional services and billing according to the recorded CPT codes with assigned RVUs. *See above*, ADDENDUM 3.1, ¶ 2.

86. For example, in 2017, CPT Code 31500 and Description, Insert emergency airway, had an RVU value of 3.0 and multiplying the RVU 3.0 times \$37.00 would result in a \$111.00 Productivity Bonus to the Physician for that procedure.

87. Between the years 2016-2018, Plaintiffs and the Putative Class were not properly compensated with their monthly Productivity Bonuses for work performed, as determined by recorded CPT codes with assigned RVUs at \$37.00 per RVU.

88. On information and belief, Defendants or their agents intentionally altered their Physicians' charges/billing and failed to properly compensate them for their RVU Productivity Bonus.

89. Defendants' misconduct is a wide-spread systemic problem involving Banner administration and staff who were responsible for managing Physicians' patient data/charges entered by Physicians into Banner's electronic medical records system and BMGC who was responsible for properly compensating the Physicians the RVUs earned.

90. As one example, Physicians consistently experienced numerous “lost patients and charges” where Defendants would “lose” the Physicians’ patients and data/charges so that they would not receive credit or pay for their work performed.

91. Once Physicians entered patient billing charges into Defendants’ Electronic Medical Record “Cerner” System, the data was handled by the coding and billing staff and, on information and belief, interfaced with another system referred to as the NextGen database (“NextGen”).

92. During this process/interface, involving Defendants’ Finance Department, staff, and computer systems, the Physicians’ charges were “dropped” or “disappeared” for purposes of properly compensating them.

93. Defendants received numerous complaints from Physicians regarding inaccurate billing and compensation, but Defendants did nothing to correct the problem.

94. Defendants knew or recklessly disregarded the fact that their failure to properly compensate its Physicians with their RVU Productivity pay due to lost, dropped, or disappearing charges is a wide-spread, systemic problem.

95. For example, Brown had documented 140 or more patient contacts for the month of April 20-May 20, 2017, but Defendants credited him for 80 of those recorded contacts.

96. Similarly, Reid had documented 173 patient contacts in the month of December 2018, but Defendants showed she only had 92 patient contacts.

97. BMGC Senior Coding Manager, Lisa S. Field (“Field”), acknowledged in email correspondence dated July 31, 2018, to Brown that the Physician’s lost charges are a systemic problem.

98. In her July 31, 2018 email, Ms. Field stated:

“While I don’t dispute that you uncovered many missing charges, that appeared to not come thru interface properly I will look to Mike and Dr. Pearson to give me direction on working thru the rest of the report. We are working on better processes in order to be able to identify lost charges but unsure how long it will take before we are there.”



99. Over the course of years, Defendants ignored the reported compensation problem, delayed correction of the compensation problem, or failed to fix the compensation problem.

100. By doing so, coders were prevented from posting charges that were deemed too old and Defendants used that excuse to refuse to properly credit Physicians their charges when they received complaints from Physicians.

101. By depriving the Physicians of their charges and RVU Productivity Compensation, Defendants, on information and belief, retained the financial benefit of retaining those funds.

102. In another example, Banner's administration and staff altered the Physicians' patient data and billing charges, without notice to or consent by the Physicians, in a way where the Physicians were replaced as the Billing/Rendering Provider by a lower-level, supervised, and salaried employee such as a PA or NP (collectively referred to as "Advanced Practice Providers" or "APPs").

103. Under these circumstances, Physicians' patients and charges were credited to the lower-level, salaried APP and Physicians were not given proper RVU credit or compensation under their Agreement.

104. On information and belief, Defendants retained the financial benefit of keeping those funds because APPs do not receive RVU Productivity Pay.

105. That financial benefit belongs to the Physicians and does not belong to Defendants.

106. On information and belief, Banner intentionally changed the Physician charges, without transparency or proper notice to the Physicians, in violation of their Agreement.

107. Banner's Divisional Medical Director, Western Division, Norman, admitted to Brown in an email correspondence dated September 7, 2017, that Defendants changed the billing practices and charges for Physicians and APPs without communicating the change to anyone.

108. Also, Banner's Operations Director of Specialty Clinics, Tonya Creech, admitted in an email correspondence to Brown dated November 7, 2018, that Physician charges were billed under the APPs.

109. Field likewise admitted that Defendants' coders do not bill Physicians as the Rendering Providers when they have worked with APPs.

110. Additionally, Banner's Chief Financial Officer, Mike Lewis ("Lewis") and Chief Operating Officer, Gary Chalfant ("Chalfant") later admitted to Reid during their May 13, 2019, meeting that coding staff removed her name as the Rendering Provider and replaced her with APPs.

111. A third example similarly involved Defendants' administration and staff altering the Physicians' patients and billing, without notice to or consent by the Physicians, in a way where Residents in training and supervised by Physicians replaced the Physicians as the Billing/Rendering Provider for RVU credit and compensation purposes.

112. In those instances, the Physicians, again, were deprived the proper RVU credit and compensation under the Agreement because Banner gave RVU credit to the lower-level, salaried Residents for Physicians' patients and charges.

113. On information and belief, Defendants retained the financial benefit of those funds as Residents, like APPs, do not receive RVU Productivity Pay.

114. That financial benefit belonged to the Physicians and did not belong to Defendants.

115. When Physicians requested information about Defendants' billing and compensation discrepancies, Defendants ignored complaints, delayed, refused, and stonewalled efforts by Physicians to obtain complete and accurate information.

116. When Physicians complained to Defendants about the systemic billing and compensation problems, Defendants likewise ignored complaints, delayed, and stonewalled efforts by Physicians for resolution of the problems.

117. Defendants billing and compensation practices were intentional, systemic, and fraudulent and caused Physicians damages in an amount to be proven at trial.

**(3) *Banner/BMGC Intentionally Altered Brown's Physician Records and Deprived Him of Earned Productivity Compensation in Violation of The Agreement.***

118. Brown began his employment with BMGC on February 1, 2016.

119. Brown wrote and kept confidential notes on patients contemporaneously with the work he performed at Banner.

120. If Brown submitted a charge on a patient, he has a confidential, hand-written copy of the pertinent information.

121. Approximately six months after Brown began his employment, he noticed discrepancies in his Productivity Compensation (compared with his notes) and spoke with his Practice Manager, Runge.

122. Runge assured Brown of the accuracy of the Banner billing and compensation system.

123. Brown trusted Runge and the Banner system based on the representations made to him. At that time, Brown let the issue go believing that he received a true and accurate response from his manager.

124. In April 2017, Brown moved entirely to the night shift, continued to keep detailed, confidential notes, and noticed discrepancies in his pay compared with work he performed.

125. Brown began speaking with Runge again about how his RVUs weren't adding up (his notes compared with copies of a run sheet at the end of every month with tallied up RVUs from the finance department).

126. Runge again told Brown that Banner's system was accurate and there wasn't a problem.

127. In May 2017, Brown noticed his RVUs decreased by about 200 RVUs per month. At that time, Brown spoke with Runge again.

128. Brown questioned whether there was a problem with Banner's computer system, i.e. "a systems error." Runge told Brown: "I'm sure that's not it."

129. Brown then contacted and spoke with Hospitalist Regional Director, Tony Pearson ("Pearson"). Pearson also told Brown there wasn't a problem and "these things always happen."

130. In June 2017, Brown became so frustrated that he reviewed his confidential, handwritten notes and recorded, per shift, the RVUs and billing codes he had submitted.

131. Brown wrote these down for March/April 2017 on scratch paper to determine the discrepancy with his pay.

132. Brown presented this data to Pearson and was told management would look into it. There was no response for one month.

133. Brown then sent the same information to Norman (Banner's Divisional Medical Director, Western Division).

134. Brown requested data/documentation for all of his patient billing.

135. Defendants only provided Brown with his March 2017 billing information.

136. Brown reviewed the billing information, referenced his notes, and created a spreadsheet of the differences between what charges he had billed for services provided versus the charges he was given RVU credit and his pay.

137. In September 2017, Brown uncovered large discrepancies and presented his findings to Runge, Pearson, Norman, and Lewis.

138. Brown was told by Norman that any discrepancy was likely due to "the way we changed APP billing in March 2017 but didn't tell anyone."

139. Brown requested information for the time he was employed and a complete audit of his billing charges. Defendants refused his request. Instead, Defendants agreed to provide Brown a list of his patients for January-August 2017.

140. Defendants produced to Brown two Spreadsheets for his patients at NCMC and MMC for the January-August 2017 timeframe.

141. Brown reviewed the list of patients and information provided by management and found that there were Four Hundred Sixty-Eight (468) patients "missing" and significant discrepancies in the billing charges.

142. Brown created his own comprehensive Spreadsheet #1 of "lost" patients and billing charges for the January-August 2017 timeframe.

143. In January 2018, Brown submitted his Spreadsheet #1 to Defendants, and received a response simply stating that there were too many names to review in its entirety and to select 30 patient names to begin the review process “so that we could more accurately find out what the issue was, and go from there.”

144. Brown continued trying to work with Defendants to resolve his concerns.

145. In February 2018, Brown submitted Spreadsheet #2 to Defendants with approximately 36 selected patient names and billing charges.

146. After receiving Brown’s Spreadsheet #2, Defendants told Brown they would get back to him, but they stalled and delayed until July 2018.

147. Finally, in July 2018, Defendants admitted to Brown that out of the 36 identified patient names and charges in Spreadsheet #2, he should have received RVU credit for 24 of them.

148. After receiving permission from Defendants’ administration, Field posted 24 additional charges for Brown, and Defendants paid him for those patients/charges.

149. Given the significant number of errors in Spreadsheet #2, Brown asked when Defendants would review the remaining patient names on Spreadsheet #1, but despite the significant errors, Defendants refused to review the remaining names on Spreadsheet #1.

150. Brown persisted and Pearson told him not to expect to be paid for any of this, but Defendants would again “look into it.”

151. Brown also requested information regarding patients/charges for 2016, August-December 2017, and January-April 2018, but, again, Defendants refused to provide Brown any of his patient and billing information.

152. On August 10, 2018, Brown submitted his resignation complying with the ninety-day notice requirement. Brown’s resignation was effective November 8, 2018.

153. On the same day his resignation was submitted, Brown sent Defendants an email stating it had ninety days to review and resolve the problem.

154. Defendants told Brown they would review everything, and the problem would be “all resolved” by end of October 2018, which coincided with his last day employed with Defendants.

155. Brown never received resolution or payment for the remaining patients/charges for January-August 2017, as well as his patients/charges for 2016, August-December 2017, and January-April 2018.

156. Instead, Defendants subsequently returned Brown's January-August 2017 Spreadsheet #1 with unclear and unsupported explanations why Brown was not paid for his work, patients, and charges.

157. For example, Defendants claimed Brown did not receive credit for charges due to lack of documentation, but Brown had proper notes for all of those charges.

158. Defendants also claimed that Brown did not receive credit for one hundred admission charges because his notes were written and dated the following morning after a late or midnight admission.

159. However, Brown was specifically instructed not to backdate his Physician notes and was never notified by Banner, his BMGC Practice Manager, or Defendants' coders that the dates of the notes were a problem for billing or compensation purposes.

160. Defendants' unclear and unsupported explanations why Brown was not paid for his work, patients, and charges are not valid reasons for denying credit or payment for the work performed.

***(4) Defendants Intentionally Altered Reid's Physician Records and Deprived Her of Earned Productivity Compensation in Violation of The Agreement.***

161. Reid began her employment with Defendants on June 1, 2016.

162. When Reid noticed large discrepancies in her pay, she kept confidential notes on patients contemporaneously with the work she performed. Reid also spoke with Runge about her billing and compensation problems.

163. Runge was unable to provide an explanation regarding the data and compensation calculations.

164. Based on Reid's confidential patient notes, there were days that she saw in excess of 20 patients and submitted Physician billing charges, but she received credit and pay for only a fraction of them.

165. According to Reid's notes, between August and December 2017, 50 patient visits per month, for a total of 250 visits, disappeared from her Physician billing records from Defendants.

166. For 2018, Reid's notes showed a total of 800 patient visits were "lost" from her Physician billing records from Defendants.

167. For example, in December 2018, Reid's notes detailed 173 patient visits whereas Defendants' records reported she only had 92 patient visits for the same month.

168. Reid submitted her resignation complying with the ninety-day notice requirement. Reid's resignation was effective January 2, 2019.

169. Due to Reid's resignation, Defendants claimed that Reid owed them money for a portion of her sign-on bonus.

170. Reid disputes both the bonus reimbursement and the remaining amount owed to her for RVU Productivity Compensation.

171. On May 13, 2019, Reid attempted to resolve her billing and pay issues and participated in a meeting that included her husband, Lewis, and Chalfant.

172. During this meeting, Lewis and Chalfant admitted that some of the discrepancies in Reid's billing and pay were due to patient visits where the coding staff removed Reid as the Rendering Provider and replaced her name with an APP.

173. Reid requested that Defendants provide supporting documentation and reconciliation of all of her billing charges and Productivity compensation, but Defendants refused.

## **V. CLASS ACTION ALLEGATIONS**

174. Plaintiffs re-allege and incorporate by this reference the averments contained in paragraphs 1 through 173 as if fully set forth in this paragraph.

175. Plaintiffs bring this action as a class action on their own behalf and on behalf of all other persons similarly situated as members of the proposed class and seek to certify and maintain it as a class action under Rules 23(a); (b)(1) and/or (b)(2); and (b)(3) of the

Colorado Rules of Civil Procedure, subject to amendment and additional discovery as follows:

- a. **Colorado Physician Class**: Colorado physicians who were enticed into employment with Defendants with promises of the RVU Productivity Bonus compensation, and entered into and executed a Physician Employment Agreement with Defendants between 2016-2018 providing for RVU Productivity Compensation for professional services performed but were not properly paid under the Agreement. This class can be readily ascertained by Defendants and physician compensation and medical records.

176. Plaintiffs are members of the proposed class they seek to represent.

177. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

178. Excluded from the Class are:

- i. Defendants, including any entity or division in which Defendants have a controlling interest, along with their legal representatives, officers, directors, agents, non-physician employees, assigns, heirs, successors, and wholly or partly owned subsidiaries or affiliates;
- ii. The Judge to whom this case is assigned, the Judge's staff and immediate family; and
- iii. Any Class counsel or their immediate family members.

179. Plaintiffs reserve the right to amend the Class definition if discovery and further investigation reveal that any allegations should be amended or the Class should be expanded, divided into sub-classes, or modified in any other way.

180. Plaintiffs and the Putative Class have been damaged as a result of Defendants' wrongful billing and compensation practices and seek recovery of those damages from Defendants.

**A. The Class is Ascertainable and Satisfied the Class Action Prerequisite of Numerosity.**

181. This action meets the numerosity requirement of C.R.C.P. 23(a)(1) because Defendants employ hundreds of Colorado Physicians who have been impacted by Defendants' wrongful billing and compensation practices.



182. While the exact number of Class Members is not yet known, a precise number may be ascertained from objective criteria such as billing and compensation records kept by the Physicians and Defendants in the ordinary course of business.

183. The resolution of the claims of the Class Members in a single action will provide substantial benefits to all parties and ease the administrative burden on the Court.

184. Class Members may be notified of the pendency of this action by Court-approved notice methods.

**B. This Action Satisfies the Class Action Prerequisite of Predominance of Common Issues.**

185. There are questions of law and fact common to Plaintiffs and Class Members that predominate over any question affecting only individual Class Members, making it appropriate to bring this action under C.R.C.P. 23(a)(2) and (b)(3).

186. The answers to these common questions will advance resolution of the litigation as to all Class Members. Common legal and factual issues include:

- i. Whether Defendants engaged in the conduct alleged herein;
- ii. Whether Defendants made unlawful and misleading representations or material omissions with respect to its Physician billing and compensation processes for purposes of crediting and paying Plaintiffs their monthly Productivity Bonus;
- iii. Whether Defendants failed to properly pay Plaintiffs their earned RVU Productivity Compensation;
- iv. Whether Defendants' failure to properly pay the Productivity Compensation constitutes a breach of the parties' Agreement;
- v. Whether Defendants unlawfully retained the Plaintiffs' compensation funds.

**C. This Action Satisfies the Class Action Prerequisite of Typicality.**

187. Pursuant to C.R.C.P. 23(a)(3), Plaintiffs' claims are typical of the claims of the Class Members and arise from the same course of conduct by Defendants.

188. Plaintiffs have incurred damages by Defendants' conduct.

189. The factual bases of Defendants' actions are common to all Class Members and represent a common thread of misconduct resulting in common injury to all Class Members.

190. The relief Plaintiffs seek is typical of the relief sought for absent Class Members.

**D. This Action Satisfies the Class Action Prerequisite of Adequacy of Representation.**

191. Plaintiffs, as the representative parties, will fairly and adequately protect the interests of the Class.

192. Their interests, as well as the interests of their counsel, do not conflict with the interests of other members of the Class they seek to represent.

193. Further, Plaintiffs have retained counsel competent and well experienced in class action and commercial litigation.

194. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the Class and have the financial resources to do so.

195. Neither the Plaintiffs nor their counsel has interests adverse to the Class.

**E. A Class Action is Superior to Other Methods of Adjudication.**

196. The class action mechanism is superior to any other available means of fairly and efficiently adjudicating this case.

197. Given that a number of Colorado Physicians employed by Defendants are impacted by its fraudulent billing and compensation practices, it is impracticable for Plaintiffs and the Class to litigate their respective claims individually due to the risk of producing inconsistent or contradictory judgments, generating increased delays and expense, and wasting judicial resources.

198. No unusual difficulties are likely to be encountered in the management of this class action.

199. Therefore, the class action mechanism minimizes prospective management challenges and provides the efficiency of a single adjudication under the comprehensive oversight of a single court.

## **VI. CLAIMS FOR RELIEF FOR CLASS ACTION**

### **FIRST CLAIM FOR RELIEF Fraudulent Inducement (Banner and BMGC)**

200. Plaintiffs reallege and incorporate by this reference the averments contained in paragraphs 1 through 199 as if fully set forth in this paragraph.

201. Defendants made false representations of fact or failed to disclose facts by:

- (a) Inducing Plaintiffs to sign the Agreement with the provision for earned RVU Productivity Bonus as determined by recorded CPT codes with assigned RVUs knowing that the Plaintiffs were not given proper credit for their Productivity Compensation;
- (b) Misrepresenting to Plaintiffs that physicians would be paid \$37.00 per RVU once the threshold 3500 RVUs was met;
- (c) Misrepresenting to Plaintiffs that physicians would be paid one hundred percent (100%) of RVUs even if hospital staff was working with the physicians;
- (d) Inducing Plaintiffs with promises of the RVU Productivity Bonus during hiring meetings and discussions, representing it as the salary equalizer or extra \$20,000.00 quarterly compensation, in order to entice Plaintiffs to accept employment with Defendants;
- (e) Misrepresenting to Plaintiffs the accuracy of Defendants' billing and compensation system and denying that systemic problems existed when in fact they did and Plaintiffs' RVUs were not being properly credited and paid by Defendants;

- (f) Failing to pay Plaintiffs earned Productivity Bonus due to Physician billing charges being dropped, lost, or altered;
- (g) Improperly and retroactively modifying the parties' Agreement and failing to disclose the modifications to Plaintiffs.

202. Defendants' misrepresentations and/or omissions of facts were material.

203. At the time Defendants made the representations or concealed the facts, they knew the representations were false or knew that concealing the facts would create a false impression of the actual facts in the minds of Plaintiffs.

204. Defendants made the representations or concealed the facts with the intent that Plaintiffs would rely on the false impression of actual facts that Defendants' concealment created.

205. Plaintiffs relied on that false impression of actual facts by entering into the Agreement and providing services under the Agreement.

206. Plaintiffs' reliance on that false impression of actual facts was justified.

207. The reliance on that false impression of actual facts caused damages to Plaintiffs in amounts to be proved and determined at trial.

**SECOND CLAIM FOR RELIEF**  
**Fraudulent Concealment**  
**(Banner)**

208. Plaintiffs reallege and incorporate by this reference the averments contained in paragraphs 1 through 207 as if fully set forth in this paragraph.

209. Defendants concealed material existing facts that in equity and good conscience should be disclosed, including but not limited to:

- (a) Banner caused Plaintiffs' billing charges and/or earned CPT Codes with assigned RVUs to disappear from the electronic medical/billing system, be lost or dropped, for purposes of crediting and compensating Plaintiffs for professional services provided;

- (b) Banner and BMGC represented to Plaintiffs that their electronic system was accurate and failed to disclose systemic problems with Physician billing and compensation processes;
- (c) BMGC failed to properly credit and compensate Plaintiffs their work and monthly RVU Productivity Compensation;
- (d) Banner and BMGC failed to notify Plaintiffs, or obtain their permission, to alter their billing charges and/or earned CPT codes with assigned RVUs;
- (e) Banner and BMGC failed to notify Plaintiffs that they were removed as the Billing or Rendering Provider and replaced with a lower-level salaried employee for depriving Plaintiffs their earned charges with assigned RVUs.

210. Defendants had knowledge that such facts were being concealed.

211. Plaintiffs were ignorant of the facts that Defendants concealed.

212. Defendants intended that the concealment be acted upon.

213. Action of the concealment resulted in damages to Plaintiffs in an amount to be proved and determined at trial.

**THIRD CLAIM FOR RELIEF**  
**Breach of Contract**  
**(BMGC)**

214. Plaintiffs reallege and incorporate by this reference the averments contained in paragraphs 1 through 213 as if fully set forth in this paragraph.

215. Plaintiffs and BMGC entered and executed the Agreement.

216. The Agreement provides in pertinent part:

Productivity Bonus. In addition to the base salary, Physician will be eligible to receive a production bonus (the “Productivity Bonus”) based upon the total number of RVUs personally performed by Physician on an annual basis, as determined by recorded CPT codes for Physician’s professional services with

assigned RVUs. The following matrix sets forth the compensation to be paid to Physician for each RVU personally performed by Physician on an annual basis, based upon the total number of RVUs performed by Physician during each year of the Term:

Total Number of RVUs (as determined on an annual basis)	Payment per RVU
0-3,500	\$0.00
> 3,500	\$37.00

The Productivity Bonus will be determined on an annual basis, commencing as of the first day of each calendar year during the Term. Periodic payments of the Productivity Bonus may be made on a quarterly basis or on such other payment schedule as may be mutually agreed to by the parties; provided, however, that during the period from the Commencement Date until December 31<sup>st</sup> of the same year, the Productivity Bonus will be prorated based upon the number of months actually worked by Physician.

217. BMGC breached its Agreement with the Plaintiffs by not properly crediting Plaintiffs' their earned RVUs and compensating them as agreed to in their Agreements.

218. BMGC's breach of contract has damaged Plaintiffs in an amount to be proven and determined at trial.

**FOURTH CLAIM FOR RELIEF**  
**Unjust Enrichment**  
**(Banner and BMGC)**

219. Plaintiffs reallege and incorporate by this reference the averments contained in paragraphs 1 through 218 as if fully set forth in this paragraph.

220. The Defendants have received benefit from retaining the RVU Productivity Bonus compensation earned by and owed to Plaintiffs.

221. The amount of that benefit will be proved and determined at trial.

222. It would be unjust and inequitable for the Defendants to retain the benefit of the RVU Productivity Bonus compensation earned by and owed to Plaintiffs without

granting Plaintiffs the right to be properly paid for their professional services performed under the Agreement.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs and the Putative Class demand judgment against Defendants, jointly and severally, and request the following relief from the Court:

- a. An award certifying the Class;
- b. An award to Plaintiffs and the Class of general, compensatory, consequential, and nominal damages;
- c. An award of pre-judgment and post-judgment interest as provided for by law;
- d. An award of attorney's fees, costs, and expenses as provided by law; and
- e. For such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

**PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.**

Dated this 4<sup>th</sup> day of January 2021.

Respectfully submitted,

**BURG SIMPSON  
ELDREDGE HERSH & JARDINE, P.C.**

*Duly signed original is on file in this office and available for inspection and/or copying upon request.*

/s/ Lisa R. Marks

Brian K, Matisse, No. 33755  
Lisa R. Marks, No. 31683  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this January 4, 2021, a true and correct copy of the foregoing SECOND AMENDED CLASS COMPLAINT AND DEMAND FOR JURY TRIAL was filed and served via ICCES upon all counsel of record.

*Original signature on file with Plaintiffs' counsel*

/s/ Natalie N. Newlander

Natalie N. Newlander