

DISTRICT COURT, WELD COUNTY, COLORADO 915 10th Street Greeley, CO 80634 970-475-2400	DATE FILED: April 6, 2021 4:48 PM FILING ID: 5CB2C2179197D CASE NUMBER: 2020CV30620
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, v. Defendants: BANNER HEALTH, an Arizona nonprofit corporation, and BANNER MEDICAL GROUP COLORADO, a Colorado nonprofit corporation.	<input type="checkbox"/> COURT USE ONLY <input type="checkbox"/>
Meghan E. Pound, #33915 Sheryl K. Bridges, #38278 CAPLAN AND EARNEST LLC 3107 Iris Avenue, Suite 100 Boulder, CO 80301 Phone: 303-443-8010; Fax: 303-440-3967 mpound@celaw.com sbridges@celaw.com <i>Attorneys for Defendants</i>	Case Number: 2020 CV 30620 Division/Courtroom:
DEFENDANTS BANNER HEALTH'S AND BANNER MEDICAL GROUP COLORADO'S ANSWER TO PLAINTIFFS' SECOND AMENDED CLASS COMPLAINT AND DEMAND FOR JURY TRIAL	

Defendants Banner Health (“Banner”) and Banner Medical Group Colorado (“BMGC”, collectively, “Defendants”), by and through their attorneys, Caplan and Earnest LLC, hereby respond to Plaintiffs’ Second Amended Class Complaint and Demand for Jury Trial (“Second Amended Complaint”) and submits its Jury Demand as follows:

I. NATURE OF THE ACTION¹

1. Defendants admit that the Plaintiffs were employed with Defendant BMGC between 2016 and 2018. Defendants deny the remaining allegations contained in paragraph 1 of the Second Amended Complaint.

2. Defendants admit that each Plaintiff had physician employment agreements during the time they were employed with BMGC. Defendants deny the remaining allegations contained in paragraph 2 of the Second Amended Complaint.

3. Defendants deny the allegations in the first two sentences of paragraph 3 of the Second Amended Complaint. With respect to the third sentence of paragraph 3 of the Second Amended Complaint, Defendants admit that Dr. Brown asked questions about what he perceived as discrepancies in what he billed and what he was paid, as did Dr. Reid, but Defendants deny the remaining allegations in the third sentence of paragraph 3 of the Second Amended Complaint. Defendants are without sufficient information to admit or deny the allegations contained in the fourth sentence of Paragraph 3 of the Second Amended Complaint and, therefore, deny them.

II. PARTIES

A. Class Representatives

4. Defendants are without sufficient information to admit or deny the allegations in the first sentence of paragraph 4 of the Second Amended Complaint and, therefore, deny them. Defendants admit that Dr. Brown is a physician who is board certified in Internal Medicine and who was employed as a hospitalist by BMGC from February 1, 2016 until he resigned effective

¹ Throughout the Second Amended Complaint, Plaintiffs use headings and subheadings which do not purport to be allegations and therefore, no response is required. To the extent that the headings and subheadings are intended to be factual allegations, those allegations are denied.

November 8, 2018. Defendants deny the remaining allegations contained in paragraph 4 of the Second Amended Complaint.

5. Defendants are without sufficient information to admit or deny the allegations in the first sentence of paragraph 5 of the Second Amended Complaint and, therefore, deny them. Defendants admit Dr. Reid is a physician who is board certified in internal medicine who was employed as a hospitalist at BMGC from June 1, 2016 until she resigned effective January 2, 2019. Defendants deny the remaining allegations contained in paragraph 5 of the Second Amended Complaint.

B. Defendants

6. The statement made in paragraph 6 of the Second Amended Complaint appears to provide a definition that Plaintiffs intend to use throughout the Second Amended Complaint and does not need to be admitted or denied. To the extent a response is required, Defendants deny the allegations contained in paragraph 6 of the Second Amended Complaint.

7. The allegations contained in paragraph 7 of the Second Amended Complaint call for a legal conclusion for which no response is required. To the extent a response is required, the allegations contained in paragraph 7 of the Second Amended Complaint are denied.

8. Defendants deny the allegations contained in paragraph 8 of the Second Amended Complaint.

9. Defendants admit the allegations contained in paragraph 9 of the Second Amended Complaint.

10. Defendants admit that Banner is a large non-profit health care system, with primary markets in Arizona and Colorado and which operates in six states. It denies the remaining allegations contained in paragraph 10 of the Second Amended Complaint.

11. Defendants admit the allegations contained in paragraph 11 of the Second Amended Complaint.

12. Defendants admit that Banner has a corporate center located at 7251 West 4th Street, Greeley, Colorado 80634 and denies the remaining allegations contained in paragraph 12 of the Second Amended Complaint.

13. Defendants admit that Banner Medical Group was established in 2009 as Banner's employed physician provider group in each state where Banner operates and that BMGC was incorporated as a non-profit organization and a provider network on December 23, 2009, that has registered 1801 16th Street, Greeley, Colorado 80631 as its principal place of business with the Colorado Secretary of State. Defendants deny the remaining allegations contained in paragraph 13 of the Second Amended Complaint.

14. With respect to paragraph 14 of the Second Amended Complaint, Defendants admit that BMGC is a provider network that employs physicians as well as other types of employees and is registered in Colorado. It denies the remaining allegations contained in paragraph 14 of the Second Amended Complaint.

15. With respect to paragraph 15 of the Second Amended Complaint, Banner admits its BMGC's corporate center is located at 725 West 4th Street, Greeley, Colorado 80634, and it has a clinic located at 2923 Ginnala Drive in Loveland, Colorado. It denies the remaining allegations contained in paragraph 15 of the Second Amended Complaint.

III. JURISDICTION AND VENUE

16. Paragraph 16 of the Second Amended Complaint purports to reallege and incorporate by this reference the averments contained in paragraph 1 through 15 of the Second Amended Complaint as if fully set forth in this paragraph and, therefore, does not require a response. To the extent a response is required, those allegations are denied.

17. The allegations contained in paragraph 17 of the Second Amended Complaint call for a legal conclusion for which no response is required. However, Defendants are not contesting that this Court has subject matter jurisdiction over this action.

18. The allegations contained in paragraph 18 of the Second Amended Complaint call for a legal conclusion for which no response is required. However, Defendants are not contesting that this Court has personal jurisdiction over Defendant Banner.

19. The allegations contained in paragraph 19 of the Second Amended Complaint call for a legal conclusion for which no response is required. However, Defendants are not contesting that this Court has personal jurisdiction over Defendant BMGC.

20. Defendants admit the allegations contained in paragraph 20 of the Second Amended Complaint.

21. The allegations contained in paragraph 21 of the Second Amended Complaint call for a legal conclusion for which no response is required. However, Defendants are not contesting venue.

22. Defendants admit the allegations contained in paragraph 22 of the Second Amended Complaint.

IV. GENERAL ALLEGATIONS

23. Paragraph 23 purports to reallege and incorporate the allegations contained in paragraph 1 through 22 of the Second Amended Complaint and no response is required. To the extent a response is required, the allegations are denied.

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

24. Defendants admit the allegations contained in paragraph 24 of the Second Amended Complaint.

25. Defendants admit the allegations contained in paragraph 25 of the Second Amended Complaint.

26. Defendants admit the allegations contained in paragraph 26 of the Second Amended Complaint.

27. Defendants admit the allegations contained in paragraph 27 of the Second Amended Complaint.

28. Defendants admit the allegations contained in paragraph 28 of the Second Amended Complaint.

29. Defendants admit the allegations contained in paragraph 29 of the Second Amended Complaint.

30. Defendants admit the allegations contained in paragraph 30 of the Second Amended Complaint.

31. Defendants admit that BMGC employs primary care providers, such as pediatricians, internists, family medicine physician, and obstetricians/gynecologists who provide

care for patients in clinics and hospitals owned and/or operated by Banner Health and denies the remaining allegations contained in paragraph 31 of the Second Amended Complaint.

32. Defendants admit the allegations contained in paragraph 32 of the Second Amended Complaint.

B. Defendant 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. The allegations in paragraph 33 refer to provisions within a Physician Employment Agreement between BMGC and Dr. Brown and a Physician Employment Agreement (“agreements”) between BMGC and Dr. Reid. Those agreements state what they state and to the extent that the allegations contained in paragraph 33 of the Second Amended Complaint are inconsistent with the agreements, the allegations are denied.

34. Defendants admit that on or about May 8, 2015, Brown attended a site visit with the Defendants for a position as a hospitalist and that he met with Dr. Reinhardt and Carol Runge, albeit it separately. Defendants deny the remaining allegations contained in paragraph 34 of the Second Amended Complaint.

35. Defendants deny the allegations contained in paragraph 35 of the Second Amended Complaint.

36. Defendants deny the allegations contained in paragraph 36 of the Second Amended Complaint.

37. Defendants admit that on the evening of May 8, 2015, Dr. Brown attended a dinner at Bonefish Grill with other hospitalists employed by BMGC but deny the remaining allegations contained in paragraph 37 of the Second Amended Complaint.

38. Defendants are without sufficient information to admit or deny the allegations contained in paragraph 38 of the Second Amended Complaint and, therefore, deny them.

39. Defendants deny the allegations contained in paragraph 39 of the Second Amended Complaint.

40. Defendants deny the allegations contained in paragraph 40 of the Second Amended Complaint.

41. Defendants deny the allegations contained in paragraph 41 of the Second Amended Complaint.

42. Defendants deny the allegations contained in paragraph 42 of the Second Amended Complaint.

43. Defendants deny the allegations contained in paragraph 43 of the Second Amended Complaint.

44. The allegations contained in paragraph 44 of the Second Amended Complaint refer to a letter that states what it states. To the extent that the allegations contained in paragraph 44 of the Second Amended Complaint are inconsistent with the contents of that letter, those allegations are denied.

45. The allegations contained in paragraph 45 of the Second Amended Complaint refer to a letter that states what it states. To the extent that the allegations contained in paragraph 45 of the Second Amended Complaint are inconsistent with the contents of that letter, those allegations are denied.

46. The allegations contained in paragraph 46 of the Second Amended Complaint refer to a letter that states what it states. To the extent that the allegations contained in paragraph 46 of

the Second Amended Complaint are inconsistent with the contents of that letter, those allegations are denied.

47. The allegations contained in paragraph 47 of the Second Amended Complaint refer to a document that states what it states. To the extent that the allegations contained in paragraph 47 of the Second Amended Complaint are inconsistent with the contents of that document, those allegations are denied.

48. The allegations in paragraph 48 of the Second Amended Complaint refer to a Physician Employment Agreement between BMGC and Dr. Brown. That agreement states what it states and to the extent that the allegations contained in paragraph 48 of the Second Amended Complaint are inconsistent with the agreement, the allegations are denied.

49. Defendants admit that Dr. Reid attended a site visit in Greeley, Colorado on or about January 8, 2016 and deny the remaining allegations contained in paragraph 49 of the Second Amended Complaint.

50. Defendants deny the allegations contained in paragraph 50 of the Second Amended Complaint.

51. Defendants are without sufficient information to admit or deny the allegations contained in paragraph 51 of the Second Amended Complaint and therefore deny them.

52. Defendants admit the allegations contained in paragraph 52 of the Second Amended Complaint.

53. Defendants admit that Dr. Reid had lunch at a clinic in Greeley, Colorado and deny the remaining allegations contained in paragraph 53 of the Second Amended Complaint.

54. Defendants deny the allegations contained in paragraph 54 of the Second Amended Complaint.

55. The allegations contained in paragraph 55 of the Second Amended Complaint refer to a letter that states what it states. To the extent that the allegations contained in paragraph 55 of the Second Amended Complaint are inconsistent with the contents of that letter, those allegations are denied.

56. The allegations contained in paragraph 56 of the Second Amended Complaint refer to a letter that states what it states. To the extent that the allegations contained in paragraph 56 of the Second Amended Complaint are inconsistent with the contents of that letter, those allegations are denied.

57. The allegations contained in paragraph 57 of the Second Amended Complaint refer to a letter that states what it states. To the extent that the allegations contained in paragraph 57 of the Second Amended Complaint are inconsistent with the contents of that letter, those allegations are denied.

58. The allegations in paragraph 58 of the Second Amended Complaint refer to a Physician Employment Agreement between BMGC and Dr. Reid. That agreement states what it states and to the extent that the allegations contained in paragraph 58 of the Second Amended Complaint are inconsistent with the agreement, the allegations are denied.

59. With respect to paragraph 59 of the Second Amended Complaint, Defendants admit that physicians employed by BMGC have employment agreements but deny the remaining allegations contained in paragraph 59 of the Second Amended Complaint.

60. With respect to paragraph 60 of the Second Amended Complaint, Defendants admit Dr. Brown signed a Physician Employment Agreement with BMGC on February 1, 2016.

61. With respect to paragraph 61 of the Second Amended Complaint, Defendants admit that Dr. Reid signed a Physician Employment Agreement with BMGC effective June 1, 2016.

62. The allegations in paragraph 62 of the Amended Complaint refer to a Physician Employment Agreement between BMGC and Dr. Brown and a Physician Employment Agreement between BMGC and Dr. Reid. Those agreements state what they state and to the extent that the allegations contained in paragraph 62 of the Second Amended Complaint are inconsistent with the agreements, the allegations are denied.

63. The allegations in paragraph 63 of the Second Amended Complaint refer to a version of Physician Employment Agreements between BMGC and Dr. Brown and BMGC and Dr. Reid in 2016. Those agreements state what they state and to the extent that the allegations contained in paragraph 63 of the Second Amended Complaint are inconsistent with the agreements, the allegations are denied.

C. Defendants engaged in a Patter of Fraudulent Conduct Which Altered Physician Medical/Billing Records and Failed to Compensate RVU Productivity Compensation According to their Agreement

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

64. With respect to the allegations contained in paragraph 64 of the Second Amended Complaint, Defendants do not know what an “Electronic Health Records facility” is and, therefore, the allegations contained in paragraph 64 of the Second Amended Complaint are denied.

65. The allegations in paragraph 65 refer to Physician Employment Agreements between BMGC and Dr. Brown and BMGC and Dr. Reid. Those agreements state what they state

and to the extent that the allegations contained in paragraph 65 of the Second Amended Complaint are inconsistent with the agreements, the allegations are denied.

66. With respect to paragraph 66 of the Second Amended Complaint, the Defendants admit that they use an electronic health record called Cerner and it is referenced in physician employment agreements which describe the expectation that employed physicians participate in an electronic health record meaningful use program. To the extent paragraph 66 of the Second Amended Complaint states something different, those allegations are denied.

67. Defendants admit that they expect physicians to complete medical records and enter the appropriate CPT codes into the electronic medical record but deny the remaining allegations contained in paragraph 67 of the Second Amended Complaint.

68. Defendants deny the allegations contained in paragraph 68 of the Second Amended Complaint.²

69. Defendants deny the allegations in paragraph 69 of the Second Amended Complaint.

70. With respect to paragraph 70 of the Second Amended Complaint, Defendants admit that they hire certified coders and professional billers to generate claims that are then sent to payors including insurers and patients. Defendants deny the remaining allegations contained in paragraph 70 of the Second Amended Complaint.

71. Defendants deny the allegations contained in paragraph 71 of the Second Amended Complaint.

² Defendants object to and therefore, deny all of Plaintiffs' allegations that state: "at all pertinent times", given that the term is not defined anywhere in the Second Amended Complaint and Defendants do not know what time frame is being referenced.

72. With respect to paragraph 72 of the Second Amended Complaint, Defendants admit that they hire certified coders and professional billers to generate claims that are then sent to payors including insurers and patients. Defendants deny the remaining allegations contained in paragraph 72 of the Second Amended Complaint.

73. Defendants deny the allegations contained in paragraph 73 of the Second Amended Complaint.

74. Defendants deny the allegations contained in paragraph 74 of the Second Amended Complaint.

75. Defendants deny the allegations contained in paragraph 75 of the Second Amended Complaint.

76. With respect to paragraph 76 of the Second Amended Complaint, Defendants admit that they provide ongoing training to their employees relating to its EHR meaningful use program. To the extent that paragraph 76 of the Second Amended Complaint is intended to allege something different than that, or in addition to that, those allegations are denied.

77. The allegations in paragraph 77 of the Second Amended Complaint are too general to admit or deny and, therefore, they are denied.

78. Defendants admit the allegations contained in paragraph 78 of the Second Amended Complaint.

79. With respect to paragraph 79 of the Second Amended Complaint, Defendants admit that the physicians employed by BMGC have NPI numbers. To the extent that paragraph 79 of the Second Amended Complaint is intended to allege something different than that, or in addition to that, those allegations are denied.

80. Defendants deny the allegations contained in paragraph 80 of the Second Amended Complaint.

81. The allegations contained in paragraph 81 of the Second Amended Complaint refer to policies promulgated by the Defendants as well as legal requirements that the Defendants must follow. Those policies and legal requirements state what they state. To the extent the allegations contained in paragraph 81 of the Second Amended Complaint are inconsistent with those policies and/or legal requirements, those allegations are denied.

82. The allegations contained in paragraph 82 of the Second Amended Complaint refer to policies promulgated by the Defendants as well as legal requirements that the Defendants must follow. Those policies and legal requirements state what they state. To the extent the allegations contained in paragraph 82 of the Second Amended Complaint are inconsistent with those policies and/or legal requirements, those allegations are denied.

(2) Banner/BMG-CO Implemented Procedures with Fraudulently Altered Physician Billing/Charges for Calculating Productivity Compensation.

83. The Defendants deny the allegations contained in paragraph 83 of the Second Amended Complaint.

84. With respect to paragraph 84 of the Second Amended Complaint, the Defendants admit that BMGC's finance department is responsible for calculating wRVU credit to the providers using the billing data in the system. Defendants deny the remaining allegations contained in paragraph 84 of the Second Amended Complaint.

85. The allegations in paragraph 85 of the Second Amended Complaint refer to agreements between BMGC and Dr. Brown and BMGC and Dr. Reid. Those agreements state

what they state and to the extent that the allegations contained in paragraph 85 of the Second Amended Complaint are inconsistent with the agreements, the allegations are denied.

86. The allegations in paragraph 86 refer to agreements between BMGC and Dr. Brown and BMGC and Dr. Reid that were signed in 2016. Those agreements state what they state and to the extent that the allegations contained in paragraph 86 of the Second Amended Complaint are inconsistent with the agreements, the allegations are denied.

87. Defendants deny the allegations contained in paragraph 87 of the Second Amended Complaint.

88. Defendants deny the allegations contained in paragraph 88 of the Second Amended Complaint.

89. Defendants deny the allegations contained in paragraph 89 of the Second Amended Complaint.

90. Defendants deny the allegations contained in paragraph 90 of the Second Amended Complaint.

91. With respect to paragraph 91 of the Second Amended Complaint, Plaintiffs admit that physicians enter patient billing charges in an electronic medical record called Cerner and that Cerner interfaces with another system referred to as NextGen. Defendants deny the remaining allegations contained in paragraph 91 of the Second Amended Complaint.

92. Defendants deny the allegations contained in paragraph 92 of the Second Amended Complaint.

93. With respect to paragraph 93 of the Second Amended Complaint, Defendants admit that Dr. Brown complained about how his wRVUs were calculated. Defendants deny the remaining allegations contained in paragraph 93 of the Second Amended Complaint.

94. Defendants deny the allegations contained in paragraph 94 of the Second Amended Complaint.

95. With respect to paragraph 95 of the Second Amended Complaint, Defendants are without sufficient information to admit or deny the allegations and, therefore, deny them.

96. With respect to paragraph 96 of the Second Amended Complaint, Defendants are without sufficient information to admit or deny the allegations and, therefore, deny them.

97. Defendants deny the allegations contained in paragraph 97 of the Second Amended Complaint.

98. Paragraph 98 of the Second Amended Complaint references an email that states what it states. To the extent that the allegations contained in paragraph 98 are inconsistent with that email, in its entirety, those allegations are denied.

99. Defendants deny the allegations contained in paragraph 99 of the Second Amended Complaint.

100. Defendants deny the allegations contained in paragraph 100 of the Second Amended Complaint.

101. Defendants deny the allegations contained in paragraph 101 of the Second Amended Complaint.

102. Defendants deny the allegations contained in paragraph 102 of the Second Amended Complaint.

103. Defendants deny the allegations contained in paragraph 103 of the Second Amended Complaint.

104. Defendants deny the allegations contained in paragraph 104 of the Second Amended Complaint.

105. Defendants deny the allegations contained in paragraph 105 of the Second Amended Complaint.

106. Defendants deny the allegations contained in paragraph 106 of the Second Amended Complaint.

107. The allegations contained in paragraph 107 of the Second Amended Complaint refer to an email that Dr. Edward Norman wrote that states what it states. To the extent the allegations are inconsistent with or incomplete, those allegations are denied.

108. The allegations contained in paragraph 108 of the Second Amended Complaint refers to an email that Tonya Creech wrote that states what it states. To the extent the allegations are inconsistent with or incomplete, those allegations are denied.

109. Defendants deny the allegations contained in paragraph 109 of the Second Amended Complaint.

110. Defendants deny the allegations contained in paragraph 110 of the Second Amended Complaint.

111. Defendants deny the allegations contained in paragraph 111 of the Second Amended Complaint.

112. Defendants deny the allegations contained in paragraph 112 of the Second Amended Complaint.

113. Defendants deny the allegations contained in paragraph 113 of the Second Amended Complaint.

114. Defendants deny the allegations contained in paragraph 114 of the Second Amended Complaint.

115. Defendants deny the allegations contained in paragraph 115 of the Second Amended Complaint.

116. Defendants deny the allegations contained in paragraph 116 of the Second Amended Complaint.

117. Defendants deny the allegations contained in paragraph 117 of the Second Amended Complaint.

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

118. Defendants admit the allegations contained in paragraph 118 of the Second Amended Complaint.

119. Defendants are without sufficient information to admit or deny the allegations contained in paragraph 119 of the Second Amended Complaint and, therefore, deny them.

120. Defendants are without sufficient information to admit or deny the allegations contained in paragraph 120 of the Second Amended Complaint and, therefore, deny them.

121. Defendants are without sufficient information to admit or deny the allegations contained in paragraph 121 of the Second Amended Complaint and, therefore, deny them.

122. Defendants deny the allegations contained in paragraph 122 of the Second Amended Complaint.

123. Defendants are without sufficient information to admit or deny the allegations contained in paragraph 123 of the Second Amended Complaint and, therefore, deny them.

124. With respect to paragraph 124 of the Second Amended Complaint, Defendants admit that in April 2017, Dr. Brown moved to the night shift. Defendants are without sufficient information to admit or deny the remaining allegations in paragraph 124 of the Second Amended Complaint and, therefore, deny them.

125. Defendants are without sufficient information to admit or deny the allegations contained in paragraph 125 of the Second Amended Complaint and, therefore, deny them.

126. Defendants deny the allegations contained in paragraph 126 of the Second Amended Complaint.

127. Defendants are without sufficient information to admit or deny the allegations contained in paragraph 127 of the Second Amended Complaint and, therefore, deny them.

128. Defendants deny the allegations contained in paragraph 128 of the Second Amended Complaint.

129. With respect to paragraph 129 of the Second Amended Complaint, Defendants admit that Dr. Brown had a conversation with Dr. Pearson at some point but deny the remaining allegations contained in paragraph 129 of the Second Amended Complaint.

130. Defendants are without sufficient information to admit or deny the allegations contained in paragraph 130 of the Second Amended Complaint and, therefore, deny them.

131. Defendants are without sufficient information to admit or deny the allegations contained in paragraph 131 of the Second Amended Complaint and, therefore, deny them.

132. With respect to paragraph 132 of the Second Amended Complaint, Defendants admit that at some point in time Dr. Brown presented some data to Dr. Pearson and Dr. Pearson forwarded the information to others. Defendants deny the remaining allegations contained in paragraph 132 of the Second Amended Complaint.

133. Upon information and belief, the allegations in paragraph 133 of the Second Amended Complaint refer to an email Dr. Brown sent to Dr. Pearson and Dr. Norman on September 3, 2017, and the email states what it states. To the extent that the allegations do not reference an email or are inconsistent with the email sent by Dr. Brown, those allegations are denied.

134. Defendants deny the allegations contained in paragraph 134 of the Second Amended Complaint.

135. Defendants deny the allegations contained in paragraph 135 of the Second Amended Complaint.

136. Defendants are without sufficient information to admit or deny the allegations contained in paragraph 136 of the Second Amended Complaint and, therefore, deny them.

137. Defendants deny the allegations contained in paragraph 137 of the Second Amended Complaint.

138. Defendants deny the allegations contained in paragraph 138 of the Second Amended Complaint.

139. Defendants deny the allegations contained in paragraph 139 of the Second Amended Complaint.

140. Defendants deny the allegations contained in paragraph 140 of the Second Amended Complaint.

141. Defendants are without sufficient information to admit or deny the allegations contained in paragraph 141 of the Second Amended Complaint and, therefore, deny them.

142. Defendants are without sufficient information to admit or deny the allegations contained in paragraph 142 of the Second Amended Complaint and, therefore, deny them.

143. With respect to the allegations contained in paragraph 143 of the Second Amended Complaint, Defendants admit that Dr. Brown sent Carol Runge an email on January 26, 2018 that contained numerous attachments, and those documents state what they state. To the extent that the allegations in paragraph 143 are inconsistent or different from the documents that Dr. Brown sent, those allegations are denied. Defendants deny the remaining allegations contained in paragraph 143 of the Second Amended Complaint.

144. Defendants deny the allegations contained in paragraph 144 of the Second Amended Complaint.

145. Defendants deny the allegations contained in paragraph 145 of the Second Amended Complaint.

146. Defendants deny the allegations contained in paragraph 146 of the Second Amended Complaint.

147. Defendants deny the allegations contained in paragraph 147 of the Second Amended Complaint.

148. Defendants admit that Ms. Fields credited Dr. Brown for 24 additional claims, he received wRVU credit for those additional claims, and was compensated for those claims in

accordance with his current Physician Employment Agreement but deny the remaining allegations contained in paragraph 148 of the Second Amended Complaint.

149. Defendants deny the allegations contained in paragraph 149 of the Second Amended Complaint.

150. Defendants deny the allegations contained in paragraph 150 of the Second Amended Complaint.

151. Defendants deny the allegations contained in paragraph 151 of the Second Amended Complaint.

152. Defendants admit the allegations contained in paragraph 152 of the Second Amended Complaint.

153. The allegations contained in paragraph 153 of the Second Amended Complaint refer to an email that states what it states. To the extent the allegations contained in paragraph 153 are inconsistent with that email, those allegations are denied.

154. Defendants deny the allegations contained in paragraph 154 of the Second Amended Complaint.

155. Defendants deny the allegations contained in paragraph 155 of the Second Amended Complaint.

156. Defendants deny the allegations contained in paragraph 156 of the Second Amended Complaint.

157. Defendants deny the allegations contained in paragraph 157 of the Second Amended Complaint.

158. Defendants deny the allegations contained in paragraph 158 of the Second Amended Complaint.

159. Defendants deny the allegations contained in paragraph 159 of the Second Amended Complaint.

160. Defendants deny the allegations contained in paragraph 160 of the Second Amended Complaint.

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

161. Defendants admit the allegations contained in paragraph 161 of the Second Amended Complaint.

162. With respect to the first sentence in paragraph 162 of the Second Amended Complaint, Defendants are without sufficient information to admit or deny the allegations and, therefore, deny them. Defendants deny the remaining allegations contained in paragraph 162 of the Second Amended Complaint.

163. Defendants deny the allegations contained in paragraph 163 of the Second Amended Complaint.

164. Defendants are without sufficient information to admit or deny the allegations contained in paragraph 164 of the Second Amended Complaint and, therefore, deny them.

165. Defendants are without sufficient information to admit or deny the allegations contained in paragraph 165 of the Second Amended Complaint and, therefore, deny them.

166. Defendants are without sufficient information to admit or deny the allegations contained in paragraph 166 of the Second Amended Complaint and, therefore, deny them.

167. Defendants are without sufficient information to admit or deny the allegations contained in paragraph 167 of the Second Amended Complaint and, therefore, deny them.

168. Defendants admit the allegations contained in paragraph 168 of the Second Amended Complaint.

169. Defendants admit that Dr. Reid owed BMGC money pursuant to the express terms of her physician employment agreements. Defendants deny the remaining allegations contained in paragraph 169 of the Second Amended Complaint.

170. Defendants are without sufficient information to admit or deny the allegations contained in paragraph 170 of the Second Amended Complaint and, therefore, deny them.

171. With respect to paragraph 171 of the Second Amended Complaint, Defendants admit that Dr. Reid participated in a meeting that included her husband, Mr. Lewis, and Mr. Chalfant on May 13, 2019. Defendants deny the remaining allegations contained in paragraph 171 of the Second Amended Complaint.

172. Defendants deny the allegations contained in paragraph 172 of the Second Amended Complaint.

173. Defendants deny the allegations contained in paragraph 173 of the Second Amended Complaint.

V. CLASS ACTION ALLEGATIONS³

174. Defendants hereby incorporate the responses provided in Paragraphs 1-173 of the Second Amended Complaint, above, as if being fully set forth herein.

175. Defendants deny the allegations contained in paragraph 175 and 175(a) of the Second Amended Complaint.

176. Defendants deny the allegations contained in paragraph 176 of the Second Amended Complaint.

177. The allegations contained in paragraph 177 of the Second Amended Complaint are legal conclusions and no response is required. To the extent that a response is required, the allegations contained in paragraph 177 of the Second Amended Complaint are denied.

³ Section V of the Second Amended Complaint is accompanied by the subheading “Class Action Allegations” but does not purport to be a motion to certify a class. To the extent that it is, such motion is premature because it contains only conclusory allegations and does not give the Court any evidence that would enable the Court to find by a preponderance of the evidence that the prerequisites of C.R.C.P. 23(a) and (b) have been met. *See, e.g., Garcia v. Medved Chevrolet, Inc.*, 240 P.3d 371, 377 (Colo. App. 2009), *aff’d*, 263 P.3d 92 (Colo. 2011). While *Garcia*, also states: “[a] court must accept as true the allegations in support of certification”, it is clear from the facts of the case that the district court reviewed numerous exhibits and deposition transcripts prior to certifying the class. *See Garcia*, 240 P.3d at 376. In addition, the *Garcia* Court relied on *Farmers Ins. Exch. v. Benzing*, 206 P.3d 812, 818 (Colo.2009) in the latter recitation of legal precedent. In making this assertion, the *Farmers Ins. Exch. Court* relied upon *Vallario v. Vandehey*, 554 F.3d 1259, 1265 (10th Cir. 2009). However, in *Vallario*, the Tenth Circuit recognized: “[o]ur precedent is clear that at the class certification stage a district court must generally accept the substantive, non-conclusory allegations of the complaint as true. Moreover, we have required district courts, in making a class certification ruling, to conduct a ‘rigorous analysis’ of Rule 23’s requirements.” *Vallario*, 554 F.3d at 1265. The allegations made in section V of the Second Amended Complaint are conclusory and legally insufficient to serve as a basis to certify a class.

178. The allegations contained in paragraph 178 of the Second Amended Complaint are legal conclusions and no response is required. To the extent that a response is required, the allegations contained in paragraph 178 of the Second Amended Complaint are denied.

179. The allegations contained in paragraph 179 of the Second Amended Complaint are legal conclusions and no response is required. To the extent that a response is required, the allegations contained in paragraph 179 of the Second Amended Complaint are denied.

180. Defendants deny the allegations contained in paragraph 180 of the Second Amended Complaint.

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

181. The allegations contained in paragraph 181 of the Second Amended Complaint are legal conclusions and no response is required. To the extent that a response is required, the allegations contained in paragraph 181 of the Second Amended Complaint are denied.

182. Defendants deny the allegations contained in paragraph 182 of the Second Amended Complaint.

183. The allegations contained in paragraph 183 of the Second Amended Complaint are legal conclusions and no response is required. To the extent that a response is required, the allegations contained in paragraph 183 of the Second Amended Complaint are denied.

184. The allegations contained in paragraph 184 of the Second Amended Complaint are legal conclusions and no response is required. To the extent that a response is required, the allegations contained in paragraph 184 of the Second Amended Complaint are denied.

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

185. The allegations contained in paragraph 185 of the Second Amended Complaint are legal conclusions and no response is required. To the extent that a response is required, the allegations contained in paragraph 185 of the Second Amended Complaint are denied.

186. The allegations contained in paragraph 186(i)-(v) of the Second Amended Complaint are legal conclusions and no response is required. To the extent that a response is required, the allegations contained in paragraph 186(i)-(v) of the Second Amended Complaint are denied.

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

187. The allegations contained in paragraph 187 of the Second Amended Complaint are legal conclusions and no response is required. To the extent that a response is required, the allegations contained in paragraph 187 of the Second Amended Complaint are denied.

188. Defendants deny the allegations contained in paragraph 188 of the Second Amended Complaint.

189. Defendants deny the allegations contained in paragraph 189 of the Second Amended Complaint.

190. The allegations contained in paragraph 190 of the Second Amended Complaint are legal conclusions and no response is required. To the extent that a response is required, the allegations contained in paragraph 190 of the Second Amended Complaint are denied.

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

191. The allegations contained in paragraph 191 of the Second Amended Complaint are legal conclusions and no response is required. To the extent that a response is required, the allegations contained in paragraph 191 of the Second Amended Complaint are denied.

192. The allegations contained in paragraph 192 of the Second Amended Complaint are legal conclusions and no response is required. To the extent that a response is required, the allegations contained in paragraph 192 of the Second Amended Complaint are denied.

193. Defendants are without sufficient information to admit or deny the allegations contained in paragraph 197 of the Second Amended Complaint and, therefore, deny them.

194. Defendants are without sufficient information to admit or deny the allegations contained in paragraph 194 of the Second Amended Complaint and, therefore, deny them.

195. Defendants are without sufficient information to admit or deny the allegations contained in paragraph 195 of the Second Amended Complaint and, therefore, deny them.

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

196. Defendants deny the allegations contained in paragraph 197 of the Second Amended Complaint.

197. Defendants deny the allegations contained in paragraph 197 of the Second Amended Complaint.

198. Defendants deny the allegations contained in paragraph 198 of the Second Amended Complaint.

199. The allegations contained in paragraph 199 of the Second Amended Complaint are legal conclusions and no response is required. To the extent that a response is required, the allegations contained in paragraph 199 of the Second Amended Complaint are denied.

VI. CLAIMS FOR RELIEF FOR CLASS ACTION

FIRST CLAIM FOR RELIEF Fraudulent Inducement (Banner and BMG-CO)

200. Defendants hereby incorporate the responses provided in paragraphs 1-199, above, as if being fully set forth herein.

201-207. Defendants deny the allegations contained in paragraphs 201(a)-(g), 202, 203, 204, 205, 206, and 207 of the Second Amended Complaint.

SECOND CLAIM FOR RELIEF Fraudulent Concealment (Banner)

208. Defendants hereby incorporate the responses provided in paragraphs 1-207, above, as if being fully set forth herein.

209- 213. Defendants deny the allegations contained in paragraphs 209(a)-(e), 210, 211, 212, and 213 of the Second Amended Complaint.

THIRD CLAIM FOR RELIEF Breach of Contract (BMG-CO)

214. Defendants hereby incorporate the responses provided in paragraphs 1-214, above, as if being fully set forth herein.

215. With respect to paragraph 215 of the Second Amended Complaint, Defendants admit that physicians employed by BMGC have employment agreements but deny the remaining allegations contained in paragraph 215 of the Second Amended Complaint.

216. The allegations in paragraph 216 of the Second Amended Complaint refer to 2016 Physician Employment Agreements between BMGC and Dr. Brown and BMGC and Dr. Reid. Those agreements state what they state and to the extent that the allegations contained in paragraph 216 of the Second Amended Complaint are inconsistent with the agreements, the allegations are denied.

217. Defendants deny the allegations contained in paragraph 217 of the Second Amended Complaint.

218. Defendants deny the allegations contained in paragraph 218 of the Second Amended Complaint.

FOURTH CLAIM FOR RELIEF
Unjust Enrichment
(Banner and BMG-CO)

219. Defendants hereby incorporate the responses provided in paragraphs 1-218, above, as if being fully set forth herein.

220-222. Defendants deny the allegations contained in paragraphs 220, 221 and 222 of the Second Amended Complaint.

GENERAL DENIAL

223. Defendants deny each and every allegation not specifically admitted herein.

DEFENSES

Defendants' counsel has not yet had an opportunity to participate in discovery or to conduct a full investigation into the facts of this case. Therefore, the defenses set forth herein are pled alternatively or hypothetically pursuant to C.R.C.P. 8(e)(2). Defendants will dismiss, withdraw, or modify any defense, pursuant to C.R.C.P. 12, if it becomes known after discovery that they cannot prevail on said defense.

1. Defendants generally deny the cause, nature, and extent of Plaintiffs' claimed injuries and damages, as alleged.

2. Plaintiffs may not be the real party in interest to the claims set forth in their Amended Complaint and may otherwise lack standing to assert those claims.

3. Defendants may be entitled to set-off for any damages awarded to Plaintiffs.

4. Plaintiffs' claims may fail to state a claim for which relief can be granted.

5. Plaintiffs' claims may be barred or subject to reduction for Plaintiffs' failure to mitigate damages, if any.

6. Plaintiffs' claimed damages, if any, may have been caused by the acts of one or more third parties over whom Defendants had no agency, control, or right of control, and for whose actions Defendants cannot be liable. Defendants respectfully reserve the right to designate non-parties as appropriate pursuant to C.R.S. § 13-21-111.5.

7. Plaintiffs' claims may be barred in whole or in part by operation of compromise, accord and satisfaction, and/or novation.

8. Plaintiffs' claims may be barred in whole or in part by express terms, conditions, limitations, and disclaimers in any document or agreement applicable to Plaintiffs' claims.

9. Plaintiffs' claims may be barred in whole or in part by the doctrines of release, waiver, unclean hands, laches, estoppel, modification, rescission, and acquiescence.

10. Plaintiffs may have failed to complete a condition precedent to Defendants' obligations.

11. Plaintiffs' claims may be barred by the doctrine of consent.

12. Plaintiffs' claims are groundless, frivolous, and vexatious, permitting reasonable attorney fees pursuant to C.R.S. § 13-17-102.

13. Some of Plaintiffs' claims are barred by the economic loss rule.

14. At all times relevant, Defendants were acting in accordance with the law and in good faith.

15. Some of Plaintiffs' claims may be barred by the Statute of Frauds

16. Plaintiffs' claims may be barred by the applicable statute of limitations.

17. Plaintiffs' claims may be barred by modifications of written contracts.

18. Plaintiffs have failed to plead fraud with particularity.

19. Plaintiffs failed to comply with conditions precedent.

20. Plaintiffs claims are barred by payment.

21. To the extent the parties engaged in oral discussions that differed from the term of the written agreements entered into between Plaintiffs and BMGC, which BMGC denies, Plaintiffs claims fail as a result of merger clause contained in their various employment agreements.

PRAYER FOR RELIEF

WHEREFORE, having answered the claims for relief in Plaintiffs' Second Amended Complaint, Defendants request that the Court enter judgment in favor of Defendants and against

Plaintiffs, deny Plaintiffs' request to certify a class; dismiss Plaintiffs' claims with prejudice; award Defendants their attorneys' fees and costs; and for such other relief as the Court deems just and appropriate.

JURY DEMAND

Defendants demand a trial by jury on all issues so triable.

Respectfully submitted this 6th day of April, 2021.

CAPLAN AND EARNEST LLC

By: *s/ Meghan E. Pound*
Meghan E. Pound, #33915
Sheryl K. Bridges, #38278
Attorneys for Defendants

In accordance with C.R.C.P. §121 1-26(9) a copy of this document with original/electronic signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.

Defendants' Address:

1801 16th Street
Greeley, Colorado 80631

CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2021, I electronically filed the foregoing Defendants Banner Health's and Banner Medical Group Colorado's Answer to Plaintiffs' Second Amended Class Complaint and Demand for Jury Trial with the clerk of Court using the Colorado Court eFiling system, which will send notification of such filing to the following:

Brian K. Matise, Esq.
Emily Lubarsky, Esq.
Lisa R. Marks, Esq.
Nelson P. Boyle, Esq.
Burg Simpson Eldredge Hersh & Jardine, P.C.
40 Inverness Drive East
Englewood, CO 80112

s/ Ursula Texeira

Ursula Texeira, Paralegal