

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 9:16-cv-81180-KAM

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UNITEDHEALTHCARE OF FLORIDA,  
INC. and ALL SAVERS INSURANCE  
COMPANY,

Plaintiffs,

v.

AMERICAN RENAL ASSOCIATES  
HOLDINGS, INC., AMERICAN RENAL  
ASSOCIATES LLC, and AMERICAN  
RENAL MANAGEMENT LLC

Defendants.

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**SECOND AMENDED COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiffs UnitedHealthcare of Florida, Inc. (“UHC of Florida”), and All Savers Insurance Company (“ASI”) (collectively referred to herein as “United”), in their Complaint against Defendants American Renal Associates Holdings, Inc. (“ARAH”), American Renal Associates LLC (“ARA LLC”), and American Renal Management LLC (“ARM”) hereby state and allege as follows:

**NATURE OF THIS ACTION**

1. Since at least the beginning of 2016 – and likely years earlier – ARAH, ARA LLC, and ARM have developed and implemented a fraudulent, illegal, and unfair patient-steering scheme designed to unlawfully and unjustly obtain benefit payments from United for dialysis services rendered to vulnerable patients suffering from chronic kidney disease.

2. ARAH has publicly acknowledged that one of the main risks to “[a]n investment in shares of [its] common stock” is the potential for “decline in the number

of patients with commercial insurance.” (See ARAH April 22, 2016 Form 424B4 at 9.) In fact, ARAH has admitted that it needs to “continuously obtain new patients covered by commercial insurance” to avoid adverse operating results. (*Id.* at 21.)

3. Faced with this financial reality, and an impending initial public offering of ARAH’s stock scheduled for April 2016 (“IPO”), ARAH, ARA LLC, and ARM developed a scheme whereby they could quickly increase revenues and profits (i.e., the number of commercially insured patients receiving dialysis treatments at their facilities).

4. On or around January 1, 2016, four months before ARAH’s IPO, ARA LLC and ARM personnel worked (at ARAH’s direction) to convince dozens of patients in Florida and Ohio to abandon their primary Medicaid coverage (or forego available Medicare coverage) and enroll into commercial plans offered by United through the health insurance exchanges established under the Patient Protection and Affordable Care Act (“ACA”).

5. In doing so, ARA LLC and ARM used some of Florida and Ohio’s most vulnerable patients – those eligible for Medicaid and Medicare who also suffer from end-stage renal disease (“ESRD”) – as pawns in ARAH’s, ARA LLC’s and ARM’s unlawful, unethical, and inappropriate steering scheme. ARAH’s, ARA LLC’s, and ARM’s efforts have caused United to make substantial payments that United would not have made had ARAH, ARA LLC and ARM acted truthfully and lawfully.

6. ARAH’s, ARA LLC’s, and ARM’s motivation is clear. Medicaid and Medicare pay ARA a reimbursement rate of \$300 or less for one session of dialysis services rendered to an ESRD patient (the Medicaid rates in Florida and Ohio are less than \$200 for one session of dialysis services). But ARA is an out-of-network provider for United’s commercial plans. This means that ARA does not have a contractually agreed upon rate for dialysis services rendered to patients insured under those plans.

As an out-of-network provider, ARA felt free to bill United at rates that are as much as twenty times the rates it would receive from Medicaid and/or Medicare.

7. Knowing of its out-of-network status with United, ARA LLC and ARM, directed by ARAH management, steered ESRD patients away from or off of government insurance plans and into United's commercial plans. ARA LLC and ARM then submitted charges to United seeking to be paid benefits for dialysis services rendered to those patients. ARA LLC and ARM frequently billed United more than \$4,000 per treatment for dialysis services rendered to the patients – thereby billing United more than twenty times the reimbursement amount ARA would have received had it continued to bill government insurance plans for those exact same services.

8. ARAH, ARA LLC, and ARM knew that, for the scheme to work against United, they needed to overcome the financial limitations of the vulnerable patient population they wanted to steer into commercial plans. Specifically, they knew that they needed to figure out how to convince ESRD patients (many of whom are indigent, and who, under their Medicaid and Medicare plans, had little to no personal financial responsibility for their medical and pharmaceutical benefits) to take on the premium, copay, coinsurance and deductible obligations associated with the United commercial plans at issue here.

9. The solution they concocted and directed, and that ARA LLC and ARM ultimately implemented, was deceptive, fraudulent, and illegal.

10. *First*, ARA LLC and ARM counseled, influenced, and steered patients into United's commercial plans, and assisted them with enrollment into plans that were most favorable to ARA – *i.e.*, plans that would result in the highest out-of-network reimbursement.

11. *Second*, ARA LLC and ARM secured premium assistance from a third-party, the American Kidney Fund ("AKF"), to pay for the patients' commercial plan premiums. AKF's financial assistance was funded by donations ARM (with ARA LLC's

assistance) and other entities in ARA's corporate structure made to AKF – donations that were earmarked for this very purpose.

12. *Third*, ARA LLC and ARM illegally, and in violation of the language of the applicable United commercial plans, waived the patients' copay, coinsurance and deductible obligations.

13. Patients suffered as a result of ARAH's, ARA LLC's, and ARM's scheme. Upon information and belief, ARA LLC and ARM intentionally failed to inform patients that AKF's premium assistance program (as it existed prior to the filing of this lawsuit) was only available for patients receiving dialysis treatments. Consequently, the patients did not know that they would be ineligible for premium assistance if they sought to cure their condition through a kidney transplant. Moreover, while ARA LLC and ARM illegally agreed to waive the patients' copays, coinsurance and deductibles, they could not guarantee that the patients' doctors, pharmacists, medical equipment suppliers, and other service providers would similarly break the law by doing the same. Therefore, by steering patients into United's plans, ARA LLC and ARM saddled these patients with additional financial burdens that ARA LLC and ARM did not disclose. Upon information and belief, ARA LLC and ARM's steering efforts also caused some patients to acquire less favorable prescription drug coverage.

14. ARA LLC and ARM's actions violated civil common law prohibitions on fraud, misrepresentation, tortious interference, unjust enrichment, and civil conspiracy, as described herein, as well as several important criminal and civil statutes, including Florida's prohibitions on false and fraudulent insurance claims (Fla. Stat. § 817.234), Florida's Patient Brokering Act (Fla. Stat. § 817.505), Florida's Anti-Kickback Statute (Fla. Stat. § 456.054), and Florida's Deceptive and Unfair Trade Practices Act (Fla. Stat. § 501.201 *et seq.*) ("FDUTPA").

15. Because ARA LLC and ARM used unlawful means to move vulnerable ESRD patients onto United's commercial plans, the services and treatments provided to

these patients after ARA LLC and ARM implemented the scheme were not lawful when rendered and were, therefore, ineligible for reimbursement.

16. As a direct and foreseeable consequence of ARA LLC and ARM's conduct, United has already paid millions of dollars in benefits that ARA LLC and ARM have retained, and which ARAH has realized on its enterprise-wide financial statements, for claims ARA LLC and ARM submitted as part of the illegal and unethical conversion and billing scheme. On ARAH's August 10, 2016 earnings call, one of ARAH's corporate executives, referring to the claims at issue in this lawsuit, stated that: "we received \$1.9 million" worth of payments from United "in the month of May."

17. Upon information and belief, ARAH's, ARA LLC's, and ARM's unlawful scheme continues to this day.

18. The chart attached hereto as Exhibit A identifies specific claims that ARA LLC and ARM have submitted pursuant to the scheme described in this Complaint, and for which United has made payments. For each claim, Exhibit A identifies the amount of the claim, the date the claim was submitted, the procedure and associated revenue code associated with each claim, the date the claim was paid, the amount that was paid, and the ARA-owned clinic where the dialysis services were rendered. Exhibit A also identifies the billing address associated with each claim. Upon information and belief, these addresses relate to operations conducted from ARAH's, ARA LLC's, and ARM's Beverly, Massachusetts corporate headquarters.

19. Each claim identified in Exhibit A relates to the provision of dialysis services. Exhibit A also anonymously identifies the members for whom ARA LLC and ARM submitted the claims. Members 1-9 are Florida residents, while Members 10-30 are Ohio residents. Several members, including members 1-6 received dialysis services at ARA LLC's and ARM's Belle Glade facility, for which payments were made. Upon information and belief, additional information identifying other ESRD patients ARA LLC and ARM targeted, converted, treated, and billed for pursuant to its illegal and

deceptive scheme described herein is uniquely within ARA LLC's, ARM's, ARAH's, and AKF's possession at this time and should be available through discovery.

20. Since this lawsuit was originally filed, ARAH executives have publicly defended the way they operate their dialysis business, which they view and refer to as one consolidated enterprise, stating on their most recent earnings call that "ARA advocates for patients by helping to educate them about their insurance options" and that "ARA is proud of the work that the American Kidney Fund does for dialysis patients."

21. At the same time, the United States Department of Health and Human Services ("HHS") Centers for Medicare & Medicaid Services ("CMS") has issued a statement calling the type of provider-driven steering that is alleged in this case "inappropriate" and telling all providers and provider-affiliated organizations (of which AKF is one) that may be currently engaged in such a practice to "end the practice."

22. CMS has also issued an interim final rule ("IFR") designed to address dialysis providers' improper efforts to steer patients onto commercial plans by using third parties like AKF to pay their premiums. In issuing the rule, CMS has explained that the problem of dialysis providers "offering to pay for, or arrange payment for" commercial insurance premiums appeared to be "widespread."

23. Journalists have also started to uncover, and publish, the nature of the inappropriate financial relationship between dialysis providers and the AKF. For example, on December 25, 2016, the *New York Times* published an exposé on the AKF and its relationship with the dialysis industry, entitled "Kidney Fund Seen Insisting on Donations, Contrary to Government Deal." The article detailed the AKF's efforts to restrict its financial support to patients of dialysis providers who had donated amounts proportional to their dialysis patients' financial needs.

24. Most recently, the major players in the dialysis industry – including ARAH, DaVita, and Fresenius, as well as AKF – have received subpoenas from the U.S. Department of Justice regarding their financial relationship and interactions with the AKF.

25. Contrary to ARAH’s executives’ assertions, ARAH’s, ARA LLC’s, and ARM’s scheme, including their coordination with AKF, has always been designed to work for ARAH, ARA LLC, ARM, and their bottom line.

26. In fact, ARAH’s executives acknowledged on their last two quarterly earnings calls that the primary driver of the revenue increases their dialysis services business had realized during 2016 was the fact that more of its patients had become enrolled in private commercial plans offered through the health insurance exchanges.

27. Before this lawsuit was filed, AKF also publicly stated and maintained that it operated its patient premium payment program “strictly in accordance with the guidelines set forth in Advisory Opinion 97-1.” (See AKF’s previously-public description of its “HIPP” program, attached as Exhibit B, at 14.) Advisory Opinion 97-1 is an opinion AKF sought and received from the HHS Office of Inspector General (“OIG”) in 1997, wherein the OIG allowed AKF to receive donations from dialysis services providers under certain circumstances, based on representations AKF had made about how its program would operate.

28. In that opinion, the OIG made clear that it had relied on AKF’s representation that, while AKF would rely on donations from dialysis providers to fund premium assistance grants, those grants would be equally available to all needy patients *regardless of the provider from whom they sought dialysis services*. In other words, a patient who received dialysis from a provider who did not donate a penny to AKF would have the same opportunity to receive financial assistance as one who received dialysis at a provider like ARA that donated millions of dollars to AKF.

29. But the description of its program that AKF maintained on its website – until this lawsuit was filed – demonstrated that AKF had not followed through on its promise to the OIG. To the contrary, in describing its program, AKF specifically instructed dialysis providers that they needed to comply with AKF’s “Honor System” by tracking the amount of money their patients received from AKF and donating an equivalent amount back to the program. AKF further instructed those providers who did not want to donate according to that system *to not submit any applications on behalf of needy patients*.

30. AKF also inexplicably structured its grant application process so that only a dialysis provider could submit applications for patients; patients could not do so on their own behalf.

31. In other words, the HIPP program was designed to make certain that premium assistance very much depended on which dialysis provider a patient sought services from, and whether that provider had been making, or was willing to make, proportional “donations” to AKF.

32. Since this lawsuit was filed, AKF has replaced the aforementioned description of its premium payment program, and its proportional-donation requirements, with a new description. (See AKF’s current public description of its “HIPP” program, attached as Exhibit C.) In the new description, AKF no longer claims that it operates its program “strictly in accordance” with Advisory Opinion 97-1. Rather, AKF now claims that it operates “with careful adherence” to the OIG guidelines. (See Ex. C at 4.) All mentions of AKF’s “Honor System” are conspicuously absent from AKF’s new description.

33. United brings this action to put a stop to the illegal, deceptive, and fraudulent efforts of ARAH, ARA LLC, and ARM that jeopardize patient safety and have caused financial harm to United. Pursuant to 28 U.S.C. § 2201 and Fla. Stat § 501.211(1), United seeks a declaratory judgment that ARA LLC and ARM are operating

in violation of state law and that United is not liable for any pending or future claims submitted by ARA LLC and ARM based on the conduct described herein. United also asserts a statutory claim under Fla. Stat. § 501.201 *et seq.* and common law claims for fraud, negligent misrepresentation, unjust enrichment, tortious interference with contract, civil conspiracy, and aiding and abetting fraud, to recover, at a minimum, actual damages in the amount of benefits paid on the unlawful and fraudulent claims ARA LLC and ARM have submitted, or caused to be submitted, to United pursuant to ARA LLC's, ARM's, and ARAH's illegal scheme. Because a monetary remedy alone will not ensure that the unlawful conduct described herein will not continue, United also seeks permanent injunctive relief in connection with several of its claims.

#### PARTIES

34. Plaintiff UHC of Florida is a corporation organized under the laws of the State of Florida, with its principal place of business in the State of Florida. UHC of Florida insures and administers plans that are offered in the State of Florida.

35. Plaintiff ASI is a corporation organized under the laws of the State of Indiana, with its principal place of business in the State of Indiana. ASI insures and administers the Navigate Plus plan offered in the State of Ohio.

36. Defendant ARAH is a publicly-traded corporation organized under the laws of the State of Delaware, with its principal place of business located at 500 Cummings Center, Suite 6550, in Beverly, Massachusetts. ARAH has represented to the United States Securities and Exchange Commission ("SEC") that it is "a national provider of kidney dialysis services for patients suffering from chronic kidney failure, also known as end stage renal disease, or ESRD." (ARAH Aug. 9, 2016 Form 10-Q at 8.) ARAH has also represented to the SEC that "[a]s of June 30, 2016," it "owned and operated 201 dialysis clinics treating 13,755 patients in 25 states and the District of Columbia." (*Id.*) Thirty nine of those clinics are located in the State of Florida. ARAH's executives view the company's operations and manage its business as one,

consolidated, operational whole, adopting and implementing enterprise-wide strategies from what they refer to as their Beverly, Massachusetts “corporate headquarters.”

37. Defendant ARA LLC is a company organized under the laws of the State of Delaware, with its principal place of business located at 500 Cummings Center, Suite 6550, in Beverly, Massachusetts. ARA LLC is 100% owned by ARAH. ARA LLC owns and operates free-standing dialysis clinics throughout the country, including thirty nine clinics in the State of Florida, some of which are located in the cities of Clewiston and Belle Glade. ARA LLC owns and operates sixteen dialysis clinics in the State of Ohio, including centers located in the cities of Warren and Youngstown. ARA LLC owns, operates, and manages more dialysis clinics in the State of Florida than in any other state.

38. Defendant ARM is a company organized under the laws of the State of Delaware, with its principal place of business located at 500 Cummings Center, Suite 6550, in Beverly, Massachusetts. ARM is 100% owned directly by ARA LLC and indirectly by ARAH. ARM operates and manages free-standing dialysis clinics throughout the country, including dialysis clinics in the State of Florida, some of which are located in the cities of Clewiston and Belle Glade. ARM operates and manages dialysis clinics in the State of Ohio, including centers located in the cities of Warren and Youngstown. ARM operates and manages more dialysis clinics in the State of Florida than in any other state. ARM also is one of the ARA entities that makes financial payments to the American Kidney Fund on behalf of other ARA entities.

#### **JURISDICTION AND VENUE**

39. This court has personal jurisdiction over ARM in this action because ARM is registered to do business in Florida, operates and manages dialysis centers in this district and regularly transacts business in this district. Moreover, many activities giving rise to this action have taken place through contacts and communications in and into this district. Personal jurisdiction is proper before this Court pursuant to Fla. Stat. §

48.193(1)(a)(1) and (2) because ARM operates, conducts, engages in, and carries on business in Florida, has an office or agency in this state, and has committed a tortious act within this state targeted towards Florida businesses and residents. Personal jurisdiction is also proper before this Court pursuant to Fla Stat. § 48.193(2) because ARM is engaged in substantial and not isolated activity within Florida.

40. This court has personal jurisdiction over ARA LLC in this action because ARA LLC is registered to do business in Florida, owns and operates dialysis centers in this district and regularly transacts business in this district. Moreover, many activities giving rise to this action have taken place through contacts and communications in and into this district. Personal jurisdiction is proper before this Court pursuant to Fla. Stat. § 48.193(1)(a)(1) and (2) because ARA LLC operates, conducts, engages in, and carries on business in Florida, has an office or agency in this state, and has committed a tortious act within this state targeted towards Florida businesses and residents. Personal jurisdiction is also proper before this Court pursuant to Fla Stat. § 48.193(2) because ARA LLC is engaged in substantial and not isolated activity within Florida.

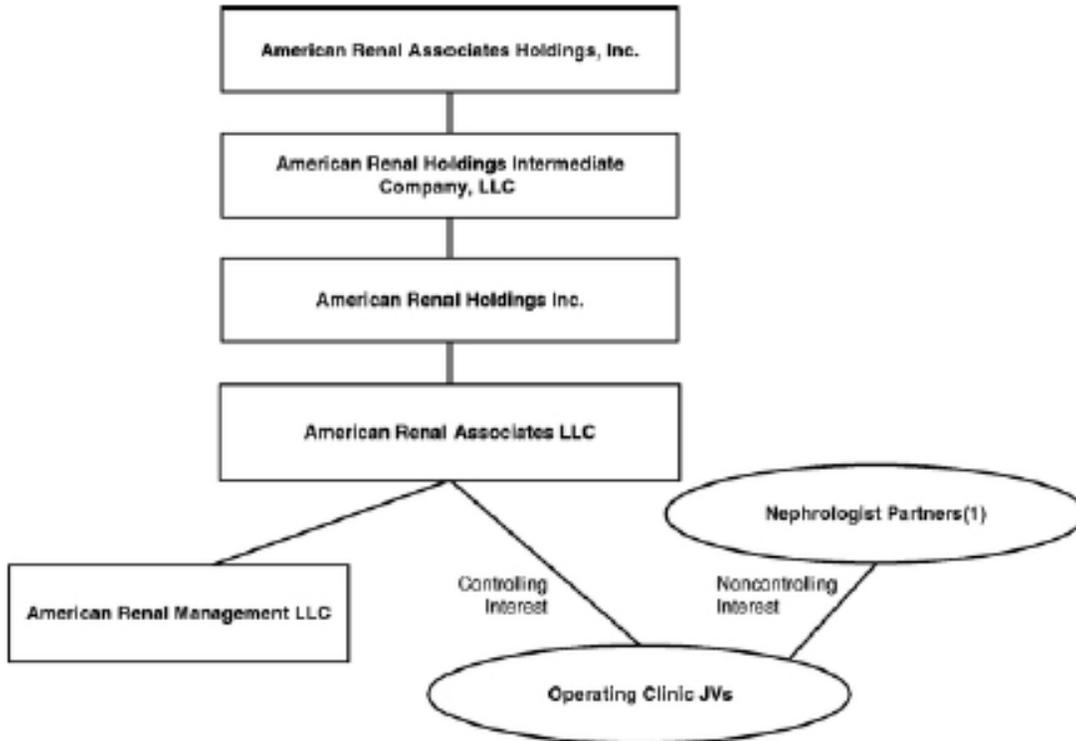
41. This court has personal jurisdiction over ARAH in this action because ARAH owns and operates dialysis centers in this district and regularly transacts business in this district. Personal jurisdiction is proper before this Court pursuant to Fla. Stat. § 48.193(1)(a)(1) and (2) because ARAH operates, conducts, engages in, and carries on business in Florida, has an office or agency in this state, and has committed a tortious act within this state targeted towards Florida businesses and residents. Personal jurisdiction is also proper before this Court pursuant to Fla Stat. § 48.193(2) because ARAH is engaged in substantial and not isolated activity within Florida.

42. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs, and is between citizens of different states.

43. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims in this action have occurred in the Southern District of Florida. Many individuals who are part of UHC of Florida’s insurance plans and many ARA-owned and controlled facilities related to this action are located in this district, and many activities giving rise to this action have taken place through ARA LLC’s and ARM’s contacts and communications in this district. UHC of Florida has also made certain commercial plans at issue in this case available in this district at all relevant times by offering them through Florida’s health insurance exchange.

**THE RELATIONSHIP BETWEEN ARAH AND ITS SUBSIDIARIES**

44. ARAH depicts its corporate structure as follows:



45. ARAH, ARA LLC, and ARM share the same managers and executives.

46. ARAH’s executive officers and directors include Joseph A. Carlucci (Chief Executive Officer and Chairman of the Board of Directors), Syed T. Kamal (President

and Director), John J. McDonough (Executive Vice President, Chief Operating Officer, and Treasurer), Jonathan L. Wilcox (Vice President and Chief Financial Officer), Michael R. Costa (Vice President, General Counsel, and Secretary), Michael E. Boxer (Director), Thomas W. Erickson (Director), Jared S. Hendricks (Director), and Steven M. Silver (Director), who manage and direct the business operations of ARAH and its wholly owned subsidiaries.

47. Upon information and believe, the executives who manage and direct business operations of ARA LLC and ARM are the same executives who manage and direct the business operations of ARAH.

48. These executives manage and use ARA LLC and ARM to serve and advance the financial and other business goals of ARAH.

49. ARAH, ARA LLC, and ARM also share the same physical space.

50. ARAH, ARA LLC, and ARM have the same address – 500 Cummings Center, Suite 6550, Beverly, Massachusetts, 01915 – which ARAH publicly holds out to be its corporate headquarters.

51. Upon information and belief, ARAH, ARA LLC, and ARM share the same physical space within the “corporate headquarters” building.

52. ARAH and ARA have the same website – [www.americanrenal.com](http://www.americanrenal.com) – and, upon information and belief, the same phone number - 978-922-3080.

53. ARAH has represented to the SEC that it is a national provider of dialysis services that owns and operates dialysis clinics across the United States, including in Florida.

54. For example, in the August 9, 2016 Form 10-Q ARAH filed with the SEC, ARAH defined “American Renal Associates Holdings, Inc.” (*i.e.* itself) as “the Company” and stated that “The Company is a national provider of kidney dialysis services for patients suffering from chronic kidney failure . . .”

55. ARAH also represented that “[a]s of June 30, 2016, the Company owned *and operated* 201 dialysis clinics treating 13,755 patients in 25 states and the District of Columbia.”

56. ARAH has made other public statements showing that it understands itself to be a provider of dialysis services, and that its business is one company.

57. For example, in the “investors” section of its website, ARAH displays press releases wherein it broadcasts to investors that it operates clinics and provides dialysis services nationwide. In one press release entitled “American Renal Associates Holdings, Inc. Opens Its 200th Dialysis Clinic,” ARAH states that “American Renal Associates Holdings, Inc. (NYSE: ARA), a leading national provider of outpatient dialysis services, announced the opening of its 200th dialysis clinic in Schererville, Indiana.”

58. ARAH has also represented to the SEC that it and its executives view its business, including its subsidiaries, as one consolidated, operational whole, and, as “decision-makers,” they exert operational control over the consolidated “ARA” enterprise.

59. For example, in its August 9, 2016 Form 10-Q, ARAH stated that “the chief operating decision-maker, or decision-making group, [makes] decisions [about] how to allocate resources and assess performance. The Company’s chief decision maker is a combination of the Chief Executive Officer, the Chief Operating Officer, and the President.”

60. ARAH went on to state that “[t]he Company views its operations and manages its business as one reportable business segment, the ownership and operation of dialysis clinics, all of which are located in the United States.”

61. In a separate section of that filing, ARAH’s management stated that the terms “we,” “our,” and “us” referred to “American Renal Associates Holdings, Inc. and its consolidated entities taken together and a whole” and went on to state that “[w]e are

the largest dialysis services provider in the United States focused exclusively on joint venture partnerships with physicians,” that “[w]e derive our patient service operating revenues from providing outpatient and inpatient dialysis treatments,” and that “the sources of these patient service operating revenues are principally government-based programs . . . as well as commercial insurance plans.”

62. ARAH made virtually identical representations to the SEC in the April 22, 2016 form 424B4 prospectus it filed with the SEC when it made an initial public offering of stock to become a public company.

63. That filing is replete with statements from ARAH connecting its business prospects directly to the performance of dialysis clinics and the amount of money that can be extracted from commercial payors. For example, ARAH stated that “[w]e depend on commercial payors for reimbursement at rates that allow us to operate at a profit,” that “our revenues are sensitive to the number of patients with commercial insurance coverage,” that “[i]f the rates paid by commercial payors decline, our operating results and cash flows would be adversely affected,” and that the company needed to “continuously obtain new patients covered by commercial insurance” to avoid adverse operating results, all while identifying one of the main risks to “[a]n investment in shares of our common stock” to be the “decline in the number of patients with commercial insurance or decline in commercial payor reimbursement rates[.]”

64. ARAH also identified “Florida (39 clinics)” and “Ohio (16 clinics)” as “states in which we operate a large number of clinics.”

65. On August 12, 2016, ARAH filed a Form 1 with the Federal Election Commission. The form confirmed that ARAH had formed a political action committee called “American Renal PAC,” presumably in order to try to influence elections in ways that benefit ARAH’s dialysis business.

66. ARAH’s executives even correspond with other businesses referring to themselves only as “ARA” and using letterhead that does not purport to be from

ARAH or any of its subsidiaries, but rather simply displays the “American Renal” mark.

67. In its April 22, 2016 form 424B4 SEC filing, ARAH stated that “[w]e believe that the ARA brand has a strong reputation and widespread recognition in the industry” and “[w]e believe that our premier brand has been and will continue to be a key factor in our success.”

68. To the extent that ARA LLC and ARM are separate entities, ARAH has made it clear that they are simply vehicles through which ARAH conducts its dialysis business nationally, including in Florida.

69. For example, ARAH stated in its April 22, 2016 424B4 SEC filing, that “[a]s of December 31, 2015, on average we, through American Renal Associates LLC or another subsidiary, held 54% of the interests in our clinics[.]”

70. ARAH also lists “American Renal Associates LLC” as its “corporate office” on its website.

71. In its April 22, 2016 424B SEC filing, ARAH stated that “[w]e, through American Renal Associates LLC or another subsidiary . . . typically enter into a joint venture operating agreement . . . and a management services agreement . . . pursuant to which we provide various support services to our clinics[.]” Without confining its statements to any particular subsidiary, ARAH later explained that “we provide our JV clinics with *all of the managerial, accounting, financial, technological and administrative support necessary to operate our clinics.*” (emphasis added.)

72. In that April 22, 2016 424B SEC filing, ARAH also identified American Renal Management as another “subsidiary through which we conduct our management services for our joint ventures.”

73. ARAH went on to state that “[t]he management services we provide to our clinics generally include: . . . human resource functions, general accounting functions; *clinical and technical services*; . . . providing manuals, policies and procedures;

performing payroll processing . . . ; *billing and collection and payment of accounts receivable*; providing staff training programs; . . . preparing annual operating budgets; . . . . procuring and maintaining insurance policies; *and performing legal and compliance services.*" (emphasis added.)

74. And ARAH discussed the role of its executives without making any effort to confine or assign their responsibilities to one entity or another, suggesting that those executives control and direct the operations of all of its consolidated and wholly owned entities, including ARA. For example, ARAH stated that "[o]ur executive and senior management team operates out of our Beverly, Massachusetts headquarters" and that "[e]xecutive management located at our corporate headquarters includes our chairman and chief executive officer, chief operating officer, chief financial officer and general counsel." ARAH also made it clear that there are "[o]ther corporate staff" at that "corporate headquarters" as well, including "personnel responsible for the management of operations, clinical and regulatory services, corporate compliance, technical services, project management and billing and collection specialists." ARAH emphasized that "[o]ur corporate management is focused on supporting the operation of our dialysis clinics[.]"

75. In its August 9, 2016 10-Q, ARAH acknowledged that its "majority voting interest and/or contractual rights . . . provide the Company with the ability to direct the activities of" various joint venture entities that "most significantly influence the entity's economic performance" and that "the Company has determined that it is the primary beneficiary of these entities." If ARAH can direct the activities of its joint venture entities, it undoubtedly can and does direct the activities that most significantly impact the economic performance of the entities that it wholly owns, like ARA.

76. ARAH has adopted an official "Code of Ethics," which it displays on its website, and which states that "Please note when we use 'ARA' in this Code, we mean American Renal Associates Holdings, Inc., its subsidiaries, joint ventures and controlled

affiliated entities, including the dialysis facilities” and that “[r]eferences to ‘ARAH’ in this Code mean American Renal Associates Holdings, Inc.”

77. In the Code, ARAH sets forth its company-wide policies on issues implicated by this lawsuit, including the routine waiver of copays and deductibles, the providing or promising of things of value to induce patronage and referrals, and the “special obligation” ARA entities have to bill accurately and “comply with payor requirements.”

78. In the Code’s section entitled “Prohibition on Improper Inducements,” ARAH states, “ARA does not attract patients by routinely waiving copays and deductibles, or by providing or promising benefits, payments, gifts or other things of value.”

79. ARAH, ARA LLC, and ARM are inextricably intertwined, managerially and financially, and ARA LLC and ARM exist predominantly, if not solely, to serve the financial goals of ARAH.

80. ARA LLC’s and ARM’s revenues, earned through the management and operation of dialysis clinics, are called “patient service operating revenues” and are realized by and credited to ARAH on its financial statements. In its August 9, 2016 10-Q, for example, ARAH has explained that “[t]he major component of our revenues, which we refer to as patient service operating revenues, is derived from dialysis services.”

81. In its April 22, 2016 424B4, ARAH reported that it had realized over \$657.5 million in patient service operating revenues during 2015, which it attributed to an increase in the number of dialysis treatments performed. These revenues included revenues extracted from the management, operation, and ownership of dialysis clinics in Florida.

82. Moreover, ARAH finances and funds the operations of its subsidiaries, all the way down to the clinic level. For example, in its April 20, 2016 Form S-1/A, ARAH

stated that it would use the proceeds it generated from its initial public offering of stock “to fund our continued growth through the development of new clinics, expansion of existing clinics, or acquisition of clinics that we may identify from time to time.”

83. And in that same Form S-1/A, ARAH represented that it considers compensation and benefits for “personnel at our corporate office” (including personnel who handle billing) *as well as “charitable contributions,”* to comprise part of its “Operating Expenses.”

84. The financial payments that ARA entities make to AKF are reflected as charitable donations on the consolidated books of ARAH.

85. On information and belief, ARAH’s executives can and do direct and control the business operations and activities of ARA LLC and ARM, and cause ARA LLC and ARM to take actions designed to increase revenues and profits that get attributed to and realized by ARAH, including actions designed to increase the number of patients receiving treatment at ARA clinics who are enrolled in commercial insurance plans, including those offered on the ACA individual exchanges.

86. In its August 9, 2016 10-Q, ARAH reported that “[f]or the three years ended December 31, 2015, commercial payors . . . accounted for an average of approximately 13% of the treatments we performed, while the average for the last four quarters ended June 30, 2016 is 16%. The change in the mix of patients and treatments has largely been driven by enrollment in available medical coverage including ACA insurance products and other commercial insurance products.”

87. In that same SEC filing, ARAH also reported that “[p]atient service operating revenues per treatment for the three months ended June 30, 2016 was \$375 compared with \$365 for the three months ended June 30, 2015 driven by a meaningful improvement in commercial and other mix, primarily related to an increase in patients covered by ACA and other commercial insurance products.”

88. On an August 10, 2016 earnings call dedicated to the August 9, 2016 10-Q, ARAH's Chief Operations Officer, John McDonough, and ARAH's Chief Financial Officer, Jonathan Wilcox, spoke extensively about how the company had realized revenue growth primarily because more of its dialysis patients' primary insurance had changed to private commercial ACA plans. Mr. Wilcox noted that the company's "commercial mix" had risen to 16% - up from 13% - which was the company's rolling average for the previous three fiscal years. Mr. Wilcox stated that the incremental 3% was attributable primarily to patients being enrolled in ACA plans and other commercial insurance products, and Mr. McDonough noted that the new enrollees were a "combination of" previously uninsured patients and *patients who are Medicaid eligible*.

89. And on that same earnings call, ARAH's Chief Executive Officer, Joseph Carlucci, stated that "ARA advocates for patients by helping to educate them about their insurance options," talked about his belief that certain patients should be on ACA plans as opposed to Medicaid, and emphasized that "[w]e, along with others in our industry, make charitable contributions to the American Kidney Fund."

## **FACTUAL BACKGROUND**

### **Treatment of Chronic Kidney Disease**

90. The kidneys play a critical role in the body's effort to excrete waste produced by metabolism. Kidneys filter blood and remove water-soluble wastes, such as urea and ammonium. Every day, the kidneys filter about 200 quarts of blood to produce about 1 to 2 quarts of urine, which is composed of wastes and extra fluid.

91. The kidneys are important because they keep the composition of the blood stable, which lets the body function properly. Among other things, they prevent the buildup of wastes and extra fluid in the body and maintain stable levels of electrolytes, such as sodium, potassium, and phosphate.

92. Chronic kidney disease (“CKD”) is a condition characterized by a gradual loss of kidney function over time. There are five stages of CKD, which generally track the functionality of the kidneys. When kidney function drops to 10–15% of normal capacity, a patient is said to be in stage five of CKD. This stage is also referred to as end-stage renal disease, or ESRD, and is an irreversible condition.

93. Patients with ESRD are commonly treated with dialysis, which is a process for removing waste and excess water from the blood. ESRD patients typically receive dialysis treatments three times per week for the rest of their lives. Importantly, dialysis does not correct the compromised functions of the kidneys – it simply replaces some of the kidneys’ functions through diffusion (waste removal) and ultrafiltration (fluid removal). The only way to cure ESRD is by a kidney transplant.

### **Insurance Coverage of Dialysis Services**

#### ***Medicaid Coverage***

94. Many patients with ESRD qualify to receive health insurance through Medicaid. Medicaid is a social health care program for families and individuals with low income and limited resources that was created by amendments to Title XIX to the Social Security Act, 42 U.S.C. §§ 1396 *et seq.* Medicaid is a means-tested program that is jointly funded by the state and federal governments and managed by the states. Under the program, the federal government provides matching funds to states to enable them to provide medical assistance to residents who meet certain eligibility requirements.

95. Florida’s Agency for Health Care Administration administers the Florida Medicaid program. Patients enrolled in Florida’s Medicaid program pay a copay of \$1 to \$3 depending on the services being rendered.

96. Ohio’s Department of Medicaid administers the Ohio Medicaid program. Patients enrolled in Ohio’s Medicaid program pay a \$3 copay per visit.

97. Upon information and belief, many patients were insured by the Medicaid program before ARA LLC and ARM counseled them to enroll into United's plans, as described herein.

*Medicare Coverage*

98. Qualifying citizens with ESRD may also be eligible to enroll in Medicare Parts A and B. Medicare coverage of dialysis services commences three months after enrollment.

99. Section 153(b) of the Medicare Improvements for Patients and Providers Act of 2008 amended the Social Security Act to require the Centers for Medicare & Medicaid Services ("CMS") to implement a fully bundled Prospective Payment System ("PPS") for renal dialysis services furnished to Medicare beneficiaries for the treatment of ESRD effective January 1, 2011. The bundled payment under the ESRD PPS includes all renal dialysis services furnished for outpatient maintenance dialysis, including drugs and biologicals (with the exception of oral-only ESRD drugs until 2024 as required by section 217(a)(1) of the Protecting Access to Medicare Act of 2014) and other renal dialysis items and services that were formerly separately payable under the previous payment methodologies. The bundled payment rate is case-mix adjusted for a number of factors relating to patient characteristics. There are also additional adjustments for ESRD facilities that have a low patient volume, and for facilities that offer home dialysis training. For high-cost patients, an ESRD facility may be eligible for outlier payments.

100. The Medicare Part B premium for most enrollees in 2015 was \$104.90 per month and the annual deductible that year was \$147. Medicare enrollees are also responsible for a copay amounting to 20% of the Medicare fee schedule. CMS has set a base reimbursement rate of \$230.39 per dialysis treatment for renal dialysis services provided in 2016.

101. Upon information and belief, many of the patients ARA LLC and ARM counseled into United's commercial plans, as described herein, were eligible for

Medicare coverage at the time they were enrolled in the United plans by ARA LLC and ARM employees.

*Private Commercial Insurance Coverage*

102. Patients with ESRD may also seek coverage from private commercial insurance plans. These plans often differ in terms of the services they cover, the facilities and providers they consider to be in-network, the premiums they charge, and the costs they require patients to bear in the form of premiums, coinsurance, copays, and deductibles. Individuals who are part of United's plans are known as "members."

103. The ACA created exchanges run by states and the federal government that are market forums where insurance companies offer various health insurance plans for individuals to compare and purchase for themselves or their families. The plans offered in the exchanges are called Qualified Health Plans and must meet certain requirements in terms of the benefits they offer, as required by the ACA.

104. UHC of Florida's Gold Compass 1500 plan is offered in Florida through Florida's health insurance exchange. ASI's Navigate Plus plan is offered in Ohio through Ohio's exchange.

105. As a means of controlling costs to their members and improving quality of care, most commercial insurers, including United, create provider networks for their plans. Providers who join a network enjoy the benefit of increased volume, as plan members are financially incentivized to seek medical treatment from in-network providers. United has contractual relationships with in-network providers that set reimbursement rates for provision of particular services. The reimbursement rates agreed to by in-network providers are generally significantly lower than the reimbursement rates charged by out-of-network providers, or those that do not have a contractual relationship with United.

106. Plan members are also incentivized by many factors to seek treatment from in-network facilities, including the fact that when members receive treatment from

in-network facilities, their commercial plans generally cover a greater share of the relevant financial obligations and the members' personal exposure is generally lower than if they were to receive treatment from an out-of-network facility. When members choose to receive treatment from an out-of-network facility, they run the risk of ending up with total financial responsibility for the cost of that treatment, or, at least, having to pay significantly higher amounts for coinsurance or other cost-sharing obligations.

107. UHC of Florida's Gold Compass 1500 plan, to which many of ARAH's, ARA LLC's and ARM's Florida patients subscribed at ARA LLC's and ARM's direction, does not provide guaranteed out-of-network benefits to its members.

108. Generally, in order for a plan member to receive treatment or services from an out-of-network provider, that member must request and obtain permission in advance from the plan to honor the member's in-network benefits, even though they are seeing an out-of-network provider.

109. At all times relevant to this action, ARA has been an out-of-network provider for the various commercial plans offered by United, including the Gold Compass 1500 and Navigate Plus plans to which ARA LLC and ARM have been steering ESRD patients.

#### **The American Kidney Fund and Its HIPA Program**

110. AKF is registered as a tax-exempt, non-profit organization under Section 501(c)(3) of the Internal Revenue Code. 26 U.S.C. §501(c)(3). AKF is based in Rockville, Maryland.

111. According to its website, AKF's mission is to "help people fight kidney disease and live healthier lives," which it claims to accomplish "by providing financial support to patients in need, and by delivering programs that educate, build awareness, and drive advocacy, resulting in greater public understanding and ultimately the prevention of kidney disease." (See <http://www.kidneyfund.org/about-us/vision-and-mission/>).

112. In 1995, AKF was a relatively small entity, receiving approximately \$500,000 in funds annually from dialysis providers, purportedly donated to fund various AKF programs. At that time, the donations AKF received from dialysis providers accounted for less than ten percent of its donations.

113. In 1997, AKF and several dialysis providers asked the OIG for an advisory opinion as to whether AKF could implement a program wherein it would take donations from certain dialysis providers (not including ARA at the time) and use the donations to pay for Medicare Part B or "Medigap" premiums for financially needy Medicare beneficiaries with ESRD without being subject to civil monetary penalties under Section 231(h) of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Section 231(h) of HIPAA gives the OIG the authority to impose civil monetary penalties against entities who offer remuneration to a program beneficiary that they know or should know will influence the beneficiary's decision to order or receive items or services covered by Medicare or Medicaid from a particular provider, practitioner, or supplier.

114. The program AKF sought permission to operate and administer was to be called the Health Insurance Premium Payment ("HIPPP") program.

115. In response to AKF's request, the OIG issued Advisory Opinion 97-1 which set forth guidelines that AKF and certain donating providers would need to follow for AKF's premium payment program to avoid being subject to civil monetary penalties.

116. Among other things, the OIG stated that AKF could not track the amount of contributions made by each provider and then dole out funds to each provider's patients based on the size of the provider's contributions. Specifically, the OIG stated that AKF could not " earmark " " contributions . . . for the use of particular beneficiaries or groups of beneficiaries," " take into account the identity of the referring provider or the amount of any donation to AKF by such provider," or " assure " providers " that the

amount of HIPP assistance their patients receive bears any relationship to the amount of their donations.”

117. The OIG also stated that providers likewise could “not track the amounts that AKF pays on behalf of patients dialyzing at their facilities in order to calculate amounts of future contributions[.]”

118. Finally, the OIG emphasized that AKF assistance should be “available to any financially needy ESRD patient regardless of provider” and should not be “limited to patients of the [donating] companies.”

119. Thus, subject to those restrictions, AKF’s HIPP program came into being.

120. As AKF has publicly represented, HIPP was designed as “a ‘last resort’ source of assistance” to dialysis patients, with funds that were intended to be “restricted to patients who ha[d] limited means of payment health insurance premiums . . . and who would forego coverage without the benefit of HIPP.” (Ex. B at 6.) AKF has emphasized that “[a]lternative programs that pay for primary or secondary health coverage . . . such as Medicaid . . . **must** be utilized first.” (*Id.*) (emphasis in original). AKF’s description of HIPP eligibility criteria thus has made clear that patients whose dialysis services were covered by Medicaid, Medicare, or another public-assistance program were not eligible for HIPP assistance to pay for alternate or supplemental coverage.

121. Today, AKF’s HIPP program has mushroomed into something far different, far more focused on maximizing the profits of large dialysis providers, and far less charitable, than the arms-length Medigap premium assistance program that was pitched to the HHS-OIG in 1997.

122. Indeed, AKF and dialysis providers have turned AKF’s HIPP program into a pay-to-play scheme, whereby AKF instructs and requires providers to calculate and contribute “donations” to AKF proportional to the amount of “funding” those providers expect their patients to draw from AKF’s HIPP program.

123. Upon information and belief, through its HIPP program, AKF now collects hundreds of millions of dollars in “donations” from dialysis providers every year. It then uses those funds to pay insurance premiums for dialysis patients who are receiving services from AKF’s provider “donors.” In 2015, AKF reported approximately \$275.6 million in “gross receipts” to the Internal Revenue Service, a substantial increase over its 2014 gross receipts (more than \$253.7 million) and its 2013 gross receipts (\$233.6 million).

124. AKF’s HIPP program is primarily funded by donations from third party dialysis providers, including ARAH and its subsidiaries.

125. Upon information and belief, DaVita Inc. and Fresenius Medical Care – the two largest dialysis providers in the United States – account for approximately 80 percent of the “donations” that AKF receives annually. Upon information and belief, ARAH and its subsidiaries account for a substantial percentage of the remainder of “donations” that AKF receives annually.

126. In 2014, it is believed that over \$189 million of the roughly \$250 million AKF received in “donations” came from DaVita and Fresenius. In 2013, it is believed that the two companies contributed approximately \$176 million of the roughly \$230 million that AKF received in “donations.”

127. Before this lawsuit was filed, AKF publicly stated that it operated its HIPP program “strictly in accordance” with the OIG opinion.

128. But AKF’s more detailed public description of the program showed that it was operating the program by doing exactly what it told the OIG it would not do: instructing and requiring providers to calculate the amounts of their future contributions based on the draw they expected their patients to take, and limiting access to premium assistance to patients of providers who donated their “fair share.”

129. As discussed above, AKF’s description of its HIPP Guidelines (*i.e.*, the official policies and procedures for the premium assistance program) contained a

section describing what AKF called its “HIPP Honor System.” (See Ex. B. at 5.) In that section, AKF instructed that “each referring dialysis provider should make equitable contributions to the HIPP pool.” (*Id.*) AKF also wrote that each provider should “reasonably determine its ‘fair share’ contribution to the pool [*i.e.* the funds available for premium assistance] by considering the number of patients it refers to HIPP.” (*Id.*) And AKF emphasized that all providers had an “ethical obligation to contribute their respective ‘fair share’ to ensure that the HIPP pool is adequately funded.” (*Id.*) Finally, AKF told providers that “[i]f your company cannot make fair and equitable contributions, we respectfully request that your organization *not refer patients to the HIPP program . . .*” (*Id.*) (emphasis added).

130. The message from AKF could not have been clearer: if providers wanted their patients’ premiums to be paid using AKF funds, the providers needed to calculate and contribute amounts of money commensurate with the size of the draw their patients would require. And if providers did not contribute their “fair share” to AKF, they should not expect the patients they refer to the HIPP program to receive AKF funding, even if the patients genuinely needed it.

131. Upon information and belief, AKF’s HIPP program has been, and continues to be, operating illegally, in violation of the 1997 guidelines established by the OIG.

132. Moreover, upon information and belief, and despite the OIG’s clear direction to the contrary, ARA LLC and ARM have been participating in and perpetuating the illegal operation of the AKF HIPP program, by calculating and making contributions to AKF based on the amount of payments ARA patients were expected to receive from the program.

133. ARAH, ARA LLC, and ARM executives track their patients who are receiving AKF funding. For example, on ARAH’s November 11, 2016 Q3 earnings call, ARAH’s CFO stated: “At September 30, 2016, approximately 300 patients that have

chosen ACA plans also had Medicaid as secondary coverage and virtually all of these patients received assistance from the AKF.” He went on to state that “Of the remaining approximately 235 patients enrolled in ACA plans, approximately 85% of them received assistance from the AKF HIPP program.”

134. When United initiated this lawsuit on July 1, 2016, AKF’s “HIPP Honor System” was in full force and effect. By August of 2016, AKF had posted a new description of its HIPP program that had removed all references to its “Honor System.”

135. The Honor System quid-pro-quo was not the only way ARA LLC, ARM, and AKF contravened the representations AKF had made to, and guidelines it had obtained from, the OIG. Before this lawsuit was initiated, according to AKF’s own description of its program, patients whose dialysis services were covered by Medicaid, Medicare, or another public-assistance program were not eligible for HIPP assistance to pay for alternate commercial coverage. AKF explicitly stated that its HIPP program was “a ‘last resort’ source of assistance” to dialysis patients and its funds were “restricted to patients who have limited means of paying health insurance premiums . . . and who would forego coverage without the benefit of HIPP.” (Ex. B. at 6.) AKF emphasized that “[a]lternative programs that pay for primary or secondary health coverage . . . such as Medicaid . . . **must** be utilized first.” (*Id.*) (emphasis in original).

136. And yet, ARA LLC and ARM repeatedly and systematically submitted applications to HIPP on behalf of patients that did not meet the program’s eligibility requirements because they had or were eligible for Medicaid or Medicare. AKF then ignored its own program requirements in determining whether to distribute funds to those patients, and provided unnecessary grants to dozens of patients who were fully insured at the time their applications were submitted. Thus, when it came to ARAH’s, ARA LLC’s, and ARM’s patients, HIPP was not a program of “last resort.”

137. Since this lawsuit commenced, AKF appears to have changed its eligibility requirements in a way that better serves ARAH’s, ARA LLC’s, and ARM’s desire to

steer Medicaid and Medicare-eligible patients onto commercial plans like United's. In particular, AKF has eliminated the previous restrictions for those patients, and has replaced its eligibility requirements with the following nebulous description: "HIPP is restricted to patients who have limited means (based on income to debt ratio) of paying primary and/or secondary health insurance premiums and who would lose coverage in the absence of assistance from HIPP." (Ex. C. at 7.)

#### **ARA's Scheme**

*ARA has steered ESRD patients onto UHC of Florida plans in Florida by waiving patient cost-sharing responsibilities and using AKF to pay patient premiums.*

138. ARA LLC and ARM provide dialysis services to Florida residents suffering from ESRD through the dozens of dialysis centers that they own, operate, and manage across the State, including centers located in the cities of Clewiston and Belle Glade.

139. ARA LLC and ARM are reimbursed and earn revenues for dialysis services through a combination of payments received from patients' insurance plans and from the patients themselves in the form of the deductible, copay, and coinsurance obligations required by each patient's respective insurance plan.

140. Although the *services* that ARA LLC and ARM provide to a patient do not vary depending on the patient's insurance plan, the *reimbursement* or "benefit" payment that ARA LLC and ARM receive from the patient's insurer for those services varies greatly depending on the patient's coverage. For example, if patients are covered by Medicaid, ARA LLC and ARM would receive the State Medicaid reimbursement rate, which on average amounts to under \$200 per visit for dialysis treatments in Florida. But if patients are covered by a private, out-of-network commercial plan, ARA LLC and ARM can receive the out-of-network reimbursement rate for the same services, which can amount to several thousand dollars and can exceed the Medicaid reimbursement rate by a factor of twenty or more.

141. Tempted by these economics, ARA LLC, ARM, and ARAH embarked on a scheme designed to extract the higher reimbursement rates from UHC of Florida and increase its profits, using deceptive, fraudulent, and unlawful means to enroll ESRD patients in certain targeted UHC of Florida plans and then bill UHC of Florida for out-of-network benefits payments.

142. Specifically, ARA LLC, ARM, and ARAH endeavored to cause ESRD patients to drop or move away from primary government insurance and convert to UHC of Florida's Gold Compass 1500 plan – a private commercial plan UHC of Florida offered in Florida through the State's federally facilitated exchange.

143. As ARA LLC, ARM, and ARAH knew, or should have known, the patients it targeted for conversion – ones who had qualified for publicly-funded insurance based on their respective ages, medical conditions and/or incomes – could not afford the additional financial obligations (in the form of premiums, coinsurance, copays, and deductibles) associated with UHC of Florida's commercial plans. Indeed, these financial responsibilities were either not owed or were substantially less under the patients' existing Medicaid and/or Medicare coverage options.

144. Nor would these patients have any meaningful incentive to enroll in the UHC of Florida plans, as their dialysis treatment would have been covered by the government plans at virtually no cost to them.

145. Accordingly, for the scheme to work, ARA LLC, ARM, and ARAH knew that they needed to eliminate these financial burdens, and persuade these patients to move away from government plans. To do so, ARA LLC, ARM, and ARAH implemented a multifaceted scheme that defrauded UHC of Florida, violated various federal and state laws, and treated ESRD patients as pawns.

146. The first pillar of the scheme was designed to address the premium payment issue. To that end, ARA LLC and ARM coordinated with AKF to do what the ARA Company as a whole could not do itself – pay its patients' premiums. They

controlled every step in the relationship with AKF. ARA LLC and ARM introduced the HIPP program to patients in ARA clinics; provided them with the requisite application for assistance; assisted the patients in filling out that application; and submitted the application on behalf of the patients. Critically, ARA LLC, ARM, and other ARA entities then ensured that the patients would receive HIPP assistance by making and causing to be made “charitable contributions” to AKF earmarked for the patients’ premiums in accordance with the AKF policy in place at the time. Many patients would then bring bills they received for premium obligations into the ARA clinic and ARA LLC and ARM would ensure that the premiums were paid for by AKF. Other patients were instructed that AKF would send premium assistance checks directly to them so that they could make the premium payments in order to avoid detection by insurance plans that did not accept third-party premium payments.

147. Not surprisingly, payment of patient insurance premiums by third parties has been a concern on which the HHS has focused for years – counseling insurers to reject such payments because of the overall impact they have on the cost of healthcare.

148. For example, in a November 4, 2013 FAQ, the HHS Secretary explained:

HHS has significant concerns with this practice because it could skew the insurance risk pool and create an unlevel field in the Marketplaces. HHS discourages this practice and encourages issuers to reject such third party payments.

149. And in a May 30, 2014, Supplemental Special Advisory Bulletin, the HHS OIG emphasized that:

A charity with narrowly defined disease funds may be subject to scrutiny if the disease funds result in funding exclusively or primarily the products of donors or if other facts and circumstances suggest that the disease fund is operated to induce the purchase of donors’ products.

150. More recently, states like Minnesota and Idaho have started recognizing that insurers need not accept premium payments or other cost-sharing payments from

third party entities and charities like AKF that receive funding from entities like ARA who have a pecuniary interest in the payment of health insurance claims.

151. Consistent with HHS guidance (and the emerging consensus among states), the United commercial plans at issue required members to make their own premium payments.

152. AKF and, upon information and belief, ARAH, ARA LLC, and ARM knew or should have known that the terms of the UHC of Florida commercial plan to which ARA LLC and ARM endeavored to steer ESRD patients did not permit AKF, ARAH, ARA LLC, ARM, or other entities within the American Renal Associates corporate structure to make premium payments for United plan members, or to contribute to or reimburse those members for their premium payments.

153. Nonetheless, ARA LLC and ARM counseled patients to enroll in the UHC of Florida plan and ARAH, ARA LLC, ARM, and other entities within the American Renal Associates corporate structure arranged for prohibited third-party payments of member premiums to be made.

154. The second pillar of the Medicaid-to-commercial conversion scheme addressed ARA's desire to maximize reimbursement. To this end, upon information and belief, ARA identified the UHC of Florida plan that would pay the highest reimbursement and ARA LLC and ARM steered patients into *that* plan without regard to whether the plan was suited to the patients' medical needs or economic status.

155. Upon information and belief, one or more employees of ARA LLC and ARM, including employees in their financial office, influenced and arranged for their ESRD patients to change their primary insurance coverage to UHC of Florida's private out-of-network plan and filled out and submitted the patients' HIPP applications to AKF.

156. The third pillar of the ARA scheme solved the copay/coinsurance/deductible problem: ARA LLC and ARM systematically and routinely waived those

obligations for patients who complied with its request to enroll in the UHC of Florida plan. This was not done to ease an otherwise unavoidable financial burden for these patients—indeed, it was a burden that *ARA LLC and ARM had created*. Rather, the strategic decision to waive the cost-sharing obligations owed was one of simple math: the money that ARA LLC and ARM forewent from these patients paled in comparison to the additional dollars they would make by switching their insurer.

157. The systemic and routine waiver of cost-sharing obligations has long been identified as a fraudulent and abusive practice within the healthcare industry.

158. In fact, as early as 1994, the HHS OIG issued a “special fraud alert” directly to healthcare providers explaining why routine waiver of cost-sharing obligations was problematic.

159. Using the Medicare program as an example, the OIG stated that a provider who routinely waives copayments or deductibles “is misstating its actual charge.” The OIG explained that if a provider billed a payor a charge of \$100, but never collected a required \$20 co-pay from the patient, the provider would have misstated its charge, which should have been \$80, and would have caused an overpayment as a result of its misrepresentation. The OIG also explained that by routinely waiving cost-sharing obligations, providers could be unlawfully inducing patients to purchase their services.

160. Today, under Fla. Stat. § 817.234(7)(a), the practice of billing usual and customary charges to insurance companies for members’ treatments and services, while routinely waiving or otherwise intending to not collect those plan members’ payment responsibilities, is specifically prohibited and identified as a form of insurance fraud.

161. Having used “counseling,” premium payments, and routine cost-sharing waivers to steer patients onto a specific UHC of Florida plan, ARA LLC and ARM billed UHC of Florida for dialysis services rendered to those patients at ARA-owned and controlled facilities in Florida. Upon information and belief, ARA LLC and ARM

handled the billing and collection of payments for those services from their shared, Beverly, Massachusetts corporate headquarters.

162. Bills were submitted on what is called a UB-04 form – the form CMS requires dialysis providers to use when billing for dialysis services.

163. The UB-04 form contains language stating that “submission of this claim constitutes certification that the billing information as shown on the face hereof is true, accurate and complete” and that “the submitter did not knowingly or recklessly disregard or misrepresent or conceal material facts.”

164. As was foreseeable from the outset, ARA LLC’s and ARM’s scheme inflicted immediate harm on the patients they manipulated into participation. Some patients eventually realized that private coverage under the UHC of Florida plan was less suited to their needs and circumstances than what they had received and enjoyed under their Medicaid coverage.

165. On information and belief, ARA LLC and ARM did not inform the patients who were counseled into moving to private coverage of the financial differences they would experience by making that change or that their Medicaid coverage might be better suited for their circumstances.

166. Further troubling is the fact that these patients, who were eligible for or receiving insurance coverage through Medicaid at the time they were counseled into the scheme, would not and should not have qualified for the HIPP plan. According to AKF at the time, HIPP funds were only available to those patients with no other insurance options. At all times relevant to this complaint, ARA LLC and ARM knew or should have known that the patients for whom they arranged HIPP assistance were not eligible to receive it because they already had insurance (or were eligible for insurance) that they could afford absent HIPP assistance. But ARA LLC and ARM (and AKF) ignored that restriction altogether, repeatedly and successfully securing HIPP funds for patients with other affordable insurance options.

167. Upon information and belief, ARA LLC and ARM also knew that some of their patients were eligible for Medicare, and counseled patients about enrolling into Medicare as a secondary payor and then using those federal funds to cover the patients' responsibilities for coinsurance and deductibles under the commercial plans to which ARA LLC and ARM steered the patients.

168. From ARAH's, ARA LLC's, and ARM's perspective, the scheme paid off in spades. ARA LLC's and ARM's actions resulted in patients who already had access to Medicaid and Medicare coverage being enrolled in the United plans – plans they did not need and could not afford, and allowed ARAH, ARA LLC, and ARM to increase their per-dialysis-session reimbursement rate to more than twenty times the sub-\$200 payments they would have received had United been billed Medicaid and/or Medicare for the dialysis services rendered.

169. Pursuant to the scheme, ARA LLC and ARM submitted claims to UHC of Florida seeking payment for dialysis services, and in doing so, misrepresented and failed to disclose material information regarding those services, their business practices, and the patient conversion scheme they had employed.

170. In early 2016, UHC of Florida received several patient treatment authorization requests from in-network nephrologists attempting to refer certain UHC of Florida Gold Compass 1500 plan members to ARA LLC facilities in Clewiston and Belle Glade, Florida. Each of the members at issue had newly enrolled in UHC of Florida's Gold Compass 1500 plan during the 2016 open enrollment period and each suffered from ESRD.

171. Due to the remote location of Clewiston and Belle Glade, UHC of Florida determined that there were no in-network dialysis providers within 35 miles of the members' homes. Thus, in an effort to ensure that members were getting the treatment that they needed, and without knowledge of ARA LLC's and ARM's deceptive and fraudulent activity described herein, UHC of Florida authorized treatment for these

members at the Clewiston and Belle Glade facilities. In authorizing treatment, UHC of Florida relied on the truth, accuracy, and completeness of the information it was provided.

172. UHC of Florida later determined that these members either were covered by Medicaid or likely could qualify for Medicaid and/or Medicare. Had UHC of Florida originally been aware of ARA LLC's and ARM's fraudulent scheme and that these patients already had Medicaid coverage, the initial treatment authorization requests would have been denied and UHC of Florida would not have paid for the dialysis services rendered. Indeed, given the extraordinary facts set forth herein, UHC of Florida would have coordinated with the patients' nephrologists, as well as Medicaid and Medicare officials, so that UHC of Florida's plans were never issued to these individuals in the first place.

173. As a direct result of ARA's unlawful and fraudulent conduct, UHC of Florida made substantial benefits payments to ARA LLC and ARM, and from which ARA LLC and ARM directly benefitted, for dialysis claims that were not valid and would not have otherwise been payable.

***ARA's actions violate Florida statutes prohibiting insurance fraud, healthcare kickbacks, and patient brokering.***

174. ARA LLC's and ARM's conduct violates Florida statutes that prohibit insurance fraud, health care kickbacks, and patient brokering.

175. Florida statutes (Fla. Stat. § 817.234 *et seq.*) prohibit insurance fraud.

176. Fla. Stat. § 817.234(1)(a)(1) states that a person commits insurance fraud if that person "causes to be presented any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy . . . knowing that such statement contains . . . false, incomplete, or misleading information concerning any fact or thing material to such claim[.]"

177. Fla. Stat. § 817.234(1)(a)(2) states that a person commits insurance fraud if that person “[p]repare[s] or makes any written or oral statement that is intended to be presented to any insurer in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy . . . knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim[.]”

178. Fla. Stat. § 817.234(1)(a)(3) states that a person commits insurance fraud if that person “Knowingly presents, causes to be presented, or prepares or makes with knowledge or belief that it will be presented to any insurer, . . . any false, incomplete, or misleading information or written or oral statement as part of, or in support of, an application for the issuance of, or the rating of, any insurance policy . . . or [k]nowingly conceals information concerning any fact material to such application[.]”

179. Finally, Fla. Stat. § 817.234(7)(a) states that “It shall constitute a material omission and insurance fraud . . . for any service provider, other than a hospital, to engage in a general business practice of billing amounts as its usual and customary charge, if such provider has agreed with the insured or intends to waive deductibles or copayments, *or does not for any other reason intend to collect the total amount of such charge.*” (emphasis added.) Thus, Fla. Stat. § 817.234(7)(a) applies to any instance where a provider, like ARA, intends, for any reason, not to collect the deductible, copayment and/or coinsurance owed by a patient pursuant to his commercial insurance plan – i.e., where ARA steers a Medicaid-eligible patient onto a commercial plan intending to manipulate CMS regulations to support ARA’s routine forgiveness of the patient’s financial responsibility under the new commercial plan.

180. The business practices and actions described above, including ARA LLC’s and ARM’s routine waiver of UHC of Florida plan members’ payment responsibilities, ARAH’s, ARA LLC’s, and ARM’s coordination with AKF to pay UHC of Florida plan members’ premiums, and ARA LLC’s and ARM’s role in presenting, preparing, and

causing to be presented to UHC of Florida false, incomplete, or misleading statements or information associated with United plan members' applications for the issuance of insurance policies and subsequent insurance claims, directly violate the provisions of Fla. Stat. § 817.234 set forth above.

181. Florida's Anti-Kickback Statute (Fla. Stat. § 456.054) prohibits kickbacks in the health care industry. Under the statute, the term "kickback" means "a remuneration or payment, by or on behalf of a provider of health care services or items, to any person as an incentive or inducement to refer patients for past or future services or items, when the payment is not tax deductible as an ordinary and necessary expense." Fla. Stat. § 456.054(1). The statute makes it "unlawful for any health care provider or any provider of health care services to offer, pay, solicit, or receive a kickback, directly or indirectly, overtly or covertly, in cash or in kind, for referring or soliciting patients." Fla. Stat. § 456.054(2). The statute also establishes that violations of its provisions shall be considered patient brokering and shall be punishable as provided in Florida's Patient Brokering Act, Fla. Stat. § 817.505.

182. ARAH, ARA LLC, and ARM have repeatedly violated Florida's Anti-Kickback Statute through their actions described above, including their practice of directly or indirectly providing remuneration to and through AKF to solicit or obtain the referral of patients for whom ARA LLC and ARM can bill UHC of Florida for out-of-network treatments or services, as well as ARAH's, ARA LLC's, and ARM's practice of making donations to AKF, which AKF uses to induce patients to purchase ARAH's, ARA LLC's, and ARM's products and services.

183. Florida's Patient Brokering Act (Fla. Stat. § 817.505 *et seq.*) separately prohibits "patient brokering," stating that "[i]t is unlawful for any person, including any health care provider or health care facility, to . . . [o]ffer or pay any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to induce the referral of patients or

patronage to or from a health care provider or health care facility[.]” Fla. Stat. § 817.505(1)(a).

184. Fla. Stat. § 817.505(1)(b) makes it unlawful for any person to solicit or receive any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in return for referring patients or patronage to or from a health care provider or health care facility.

185. Fla. Stat. § 817.505(1)(c) makes it unlawful for any person to solicit or receive any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in return for the acceptance or acknowledgement of treatment from a health care provider or health care facility.

186. Fla. Stat. § 817.505(1)(d) prohibits any health care provider or facility from aiding, abetting, advising, or otherwise participating in the conduct prohibited under Fla. Stat. § 817.505(a), (b), or (c).

187. In violation of Fla. Stat. § 817.505(1)(a), ARAH, ARA LLC, and ARM have offered to pay and has paid remuneration, directly or indirectly, to induce the referral of patients or patronage by (a) agreeing to waive patients’ cost-sharing obligations on the condition that patients enroll in UHC of Florida plans and seek dialysis services from ARA LLC and ARM, and (b) using AKF to provide cash payments to patients for their insurance premiums on the condition that the patients enroll in UHC of Florida plans and seek dialysis services from ARA LLC and ARM. ARAH, ARA LLC, and ARM have orchestrated these payments to induce patronage by patients and create the opportunity to bill UHC of Florida at higher and more profitable reimbursement rates for their dialysis services.

188. In violation of Fla. Stat. § 817.505(1)(b), AKF has solicited or received remuneration in return for referring patients and patronage to ARA by accepting “donations” on behalf of ARAH, ARA LLC, ARM, and other American Renal Associates affiliated entities and then using those “donations” to pay the insurance

premiums of patients who enrolled in UHC of Florida plans, effectively ensuring that these patients and their patronage was referred to ARA LLC and ARM under circumstances that would allow ARA LLC and ARM to extract higher and more profitable reimbursement rates from UHC of Florida. ARA LLC and ARM have violated Fla. Stat. § 817.505(1)(d) by aiding, abetting, advising, and otherwise participating in AKF's aforementioned prohibited conduct.

189. Finally, in violation of Fla. Stat. § 817.505(1)(c), UHC of Florida plan members have received remuneration from AKF and ARA LLC and ARM, in the form of waived cost-sharing obligations and covered insurance premiums, in return for their agreement to switch from primary Medicaid coverage to UHC of Florida's commercial plan and ultimately to seek treatment from ARA LLC and ARM for which ARA LLC and/or ARM could then bill UHC of Florida. Though UHC of Florida does not fault its plan members for accepting remuneration for expenses they could not otherwise afford, and understands that ARA LLC and ARM manipulated these plan members into unwitting participation in ARA's illegal scheme, ARA LLC and ARM have violated Fla. Stat. § 817.505(1)(d) by aiding, abetting, advising, and otherwise participating in this conduct.

190. ARAH has also violated Fla. Stat. § 817.505(1)(d) by aiding, abetting, advising, directing, controlling, and otherwise participating in conduct described above that violates Fla. Stat. § 817.505(a), (b), and (c).

191. Because ARAH's, ARA LLC's, and ARM's conduct is unfair, deceptive, unethical, injurious to consumers, and inconsistent with these statutes and established public policy, it also violates Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. § 501.201, as described in more detail below.

*ARA has steered ESRD patients onto ASI's Navigate Plus plan in Ohio by waiving patient cost-sharing responsibilities and using AKF to pay patient premiums.*

192. ARA LLC and ARM similarly provide dialysis services to Ohio residents suffering from ESRD through the dialysis centers that it owns, operates, and manages across the State, including centers located in the cities of Warren and Youngstown.

193. In Ohio, ASI offers the Ohio Navigate Plus plan which includes out-of-network benefits.

194. Because it provides out-of-network benefits, the Ohio Navigate Plus plan requires higher premium payments from members. Consequently, as of February 2016, only 500 Ohio members were enrolled in the Ohio Navigate Plus plan.

195. Upon information and belief, ARA LLC and ARM have implemented and continues to execute the same Medicaid-to-commercial conversion scheme in the State of Ohio as the one they implemented in the State of Florida, as is described above.

196. As in Florida, driven by its pursuit of greater profits, ARA LLC and ARM have deceitfully and fraudulently used their relationship with AKF to pay premiums for vulnerable ESRD patients of its Ohio clinics, and convinced them to drop or move away from primary government insurance and enroll in the Navigate Plus plan ASI offers in Ohio.

197. And, as in Florida, ARA LLC and ARM have systematically and routinely waived those patients' coinsurance, copayment, and deductible obligations.

198. Moreover, upon information and belief, ARA LLC and ARM have not advised these patients of the economic burdens they assume in following the direction to forego Medicaid or Medicare coverage.

199. Pursuant to its scheme, ARA LLC and/or ARM have submitted or caused to be submitted claims to ASI seeking payment for dialysis services using UB-04 forms, and in doing so, have misrepresented and failed to disclose material information

regarding those services, their business practices, and the patient steering and conversion scheme they have employed.

200. Upon information and belief, the billing and collection of payments for those services has been handled from ARA LLC's and ARM's Beverly, Massachusetts corporate headquarters.

201. As a direct result of ARA LLC's and ARM's unlawful and fraudulent conduct, ASI has paid significant amounts to ARA LLC and ARM for dialysis claims that were not and would not have otherwise been owed.

*ARA's scheme does not appear to be limited to Ohio and Florida.*

202. Recently, the California Department of Managed Health Care notified United of certain out-of-network requests that had been submitted to UnitedHealthcare Benefits Plan of California for outpatient dialysis services, and requested further information regarding the reasons the requests were submitted.

203. United commenced an investigation and identified a number of plan members with ESRD who had started seeking dialysis treatments from an out-of-network provider called "Madera Dialysis" located in Madera, California. Some of those patients lived far from the Madera clinic where they sought dialysis services and could have received those same services from in-network dialysis providers that were located significantly closer to where they live.

204. Madera Dialysis is also known as Madera Kidney Center LLC, and is a subsidiary of ARA LLC.

205. While United's investigation into this situation is in the incipient stage, it appears that ARA's efforts to steer patients onto United commercial plans to maximize revenues and profits at the expense of United, the patients themselves, and (as described below) all insureds in the relevant state, are not limited to Florida and Ohio.

206. ARA LLC and ARM also appear to have adopted new billing tactics designed to extract exorbitant payments from United. For example, since United stopped paying the “billed” charges ARA LLC and/or ARM had submitted pursuant to the aforementioned scheme, ARA LLC and/or ARM have started causing unwarranted clinical “gap exception” requests to be submitted to United in a continuing effort to get paid at the unjustified “billed” rate.

207. In some instances, ARA LLC and/or ARM have also stopped submitting claims to United on the CMS-required UB-04 and UB-92 forms, in an apparent effort to conceal information United needs to determine whether claims submitted are payable, and in what amount, to extract higher-than-justified payments from United. Instead of using UB forms as required by CMS, ARA LLC and ARM have started submitting claims on HCFA-1500 forms or comparable electronic claim forms, which is inappropriate and not consistent with industry practice or even ARA LLC’s or ARM’s historic billing practice. Unlike UB forms, these other forms do not disclose information such as bill type, revenue codes, condition codes, occurrence codes, value codes, and modifiers for revenue codes – information United needs to be able to ascertain whether claims from ARA LLC and/or ARM are payable, and if so, at what rate, under the provisions of certain United plans. Importantly, ARA LLC and ARM have not submitted all claims on the HCFA-1500 and electronic forms. Instead, they have cherry-picked claims for members with certain benefit limitations that would have been triggered had ARA LLC and/or ARM submitted the claims on UB forms. United is continuing to investigate this most recent type of deceptive and misleading conduct, and it reserves its right to recover damages it has sustained as a result.

*The use of AKF to steer ESRD patients onto commercial plans has deservedly come under increased government scrutiny in recent months.*

208. AKF's role in using vulnerable patient populations to maximize the profits of dialysis providers like ARAH, ARA LLC, and ARM has drawn increased scrutiny from government agencies.

209. Earlier this year, AKF challenged the attempts of another commercial insurer, Blue Cross of Idaho, to protect its insureds by refusing to accept premium payments from third parties, including from AKF and its HIPA program.

210. In a March 17, 2016 letter responding to the challenge, Dean L. Cameron, Director of Idaho's Department of Insurance, found that Blue Cross's decision to start rejecting third-party payments, including AKF's HIPA payments, furthered the interests of Blue Cross's insureds (including those who did and did not suffer from ESRD) as well as the general public. In doing so, Director Cameron made several important observations about the specific role AKF plays in the dialysis community.

211. *First*, citing AKF's own annual report, Director Cameron noted that AKF's HIPA program is funded by contributions from dialysis providers who "have a financial interest in their patients' care," and concluded that those dialysis providers "are indirectly paying the premium" for the patients who have secured premium assistance from AKF.

212. *Second*, Director Cameron pointed out that AKF's conduct directly and negatively impacted all Idaho insureds, noting that Idaho's Department of Insurance shared federal government's concerns about AKF payments "skewing the insurance pool and creating an unlevel field for policies sold both on and off the exchange" and the resulting "constant creep of increased premiums on all individuals."

213. *Third*, Director Cameron characterized AKF's challenge as "curious" and "interesting" because it focused on the limitations being placed on *providers*, not patients. Director Cameron wrote that, "with the purported focus of AKF's concern

being the patient . . . I find it interesting that AKF's focus is on the provider, not the patient."

214. Consistent with Director Cameron's statements and reasoning, the State of Minnesota recently recognized that insurers need not accept premium payments or other cost-sharing payments from entities like AKF, ARM. In an Administrative Bulletin dated June 23, 2016, the Minnesota Departments of Commerce and Health referred to entities like ARM and AKF as "ineligible third parties," made it clear that "[p]remium payments to carriers" from those "ineligible third parties" are "not required to be accepted," and stated that "[s]imilarly, carriers are not required to accept and count cost-sharing paid by ineligible third parties toward the deductible or out-of-pocket maximum."

215. More recently, since United filed its original Complaint, journalists have started investigating the misconduct occurring between dialysis providers and AKF, and the ways in which AKF and dialysis providers have worked to secretly undermine the 1997 OIG guidelines for the past several years.

216. On October 23, 2016, the *St. Louis Post-Dispatch* published an exposé on DaVita's efforts to steer ESRD patients onto commercial plans using, among other things, its financial relationship with AKF. Citing internal emails and documents from DaVita, the article revealed that DaVita called its project the "Medicaid Opportunity," and encouraged its workers to target specific patients and use funding from AKF (that had been "donated" by DaVita) to steer as many of those patients as possible onto ACA plans.

217. Similarly, on December 25, 2016, the *New York Times* published an exposé on the AKF and its relationship with dialysis providers, entitled "Kidney Fund Seen Insisting on Donations, Contrary to Government Deal." (See, Katie Thomas & Reed Abelson, *Kidney Fund Seen Insisting on Donations, Contrary to Government Deal*, THE NEW

YORK TIMES (Dec. 25, 2016), [http://www.nytimes.com/2016/12/25/business/kidney-fund-seen-insisting-on-donations-contrary-to-government-deal.html?\\_r=1](http://www.nytimes.com/2016/12/25/business/kidney-fund-seen-insisting-on-donations-contrary-to-government-deal.html?_r=1).)

218. The article stated that “For years, . . . the Kidney Fund’s preference for patients at the biggest clinics has been an open secret among many social workers,” and noted that 78 percent of AKF’s 2015 reported revenue of \$264 million came from two dialysis providers – DaVita and Fresenius. The article also reported that AKF “has resisted giving aid to patients at clinics that do not donate money to the fund” and that those “actions have limited crucial help for needy patients at these clinics.” Pointing out that “[t]he agreement governing the relationship between the group and [dialysis providers] forbids choosing patients based on their clinic,” the article nonetheless reported that “[i]n multiple cases, the charity pushed back on workers at clinics that had not donated money, discouraging them from signing up their patients for assistance.”

219. The article also observed that, “Until recently, the Kidney Fund’s guidelines even said clinics should not apply for patient aid if the company had not donated to the charity,” quoting the guidelines as stating “[i]f your company cannot make fair and equitable contributions, we respectfully request that your organization not refer patients.” And the article cited multiple examples of the AKF demanding that dialysis providers “make a donation that at a minimum covered the amount [AKF] had paid for [a] patient’s premium,” threatened to cut off assistance for patients if such donations were not met, and, in some instances, refused to pay patients’ monthly premiums until those patients’ dialysis providers made their monthly contributions to the HIPP fund. The article alludes to misconduct occurring in unnamed cities across the country.

220. It is now clear that AKF, the ARA company as a whole, and the other dialysis providers that funneled money through AKF operated in violation of the terms of the HHS-OIG Advisory Opinion. Indeed, the HIPP Honor System made clear that

dialysis providers' payments to AKF had to be commensurate with the amounts AKF was expected pay to cover the dialysis providers' patients' commercial insurance premiums – an arrangement that cannot seriously be described as charitable. In fact, in direct conflict with the HHS-OIG Advisory Opinion, the HIPP Honor System expressly directed and required commercially-interested dialysis providers (like ARA) to track the amounts that AKF paid (or would pay) on behalf of patients dialyzing at their facilities in order to calculate amounts of their “contributions.” As a result, dialysis providers (including ARA) conducted Return on Investment analyses and/or other types of routine financial assessments to track the profitability of their respective (and, upon information and belief, combined) relationships with AKF.

221. On January 6, 2017, DaVita and Fresenius announced that they had received subpoenas from the U.S. Department of Justice (“DOJ”) seeking information about their relationship with AKF. That same day, AKF acknowledged that it too had been subpoenaed by the DOJ. Then, on January 9, 2017, ARAH announced that it too had received a DOJ subpoena requesting information relating to its interactions with AKF and certain topics relating to applicable healthcare laws from the period from January 1, 2013 through the present.

***CMS has made it clear that the steering or influencing of people eligible for Medicare or Medicaid by providers into individual market plans is harmful to the public and the insurance market, is contrary to public policy, and must be stopped.***

222. CMS is a federal agency within HHS that administers the Medicare program and works together with state governments to administer Medicaid.

223. On August 18, 2016, CMS released a Request for Information (“RFI”) expressing its serious concerns about health care providers and provider-affiliated organizations inappropriately steering people eligible for or receiving Medicare and/or Medicaid benefits to individual market plans for the purpose of obtaining higher payment rates.

224. CMS stated that it had heard “reports that individuals who are eligible for Medicare and/or Medicaid benefits are receiving premium and other cost-sharing assistance from a third party so that the individual can enroll in individual market plans for the provider’s financial benefit. In some cases, a health care provider may estimate that the higher payment rate from an individual market plan compared to Medicare or Medicaid is sufficient to allow it to pay a patient’s premiums and still financially gain from the higher reimbursement rates.”

225. CMS also stated that “[e]nrollment decisions should be made, without influence, by the individual based on their specific circumstances, and health and financial needs.”

226. CMS explained that “when health care providers or provider-affiliated organizations steer or influence people eligible for or receiving Medicare and/or Medicaid benefits, it may not be in the best interests of the individual, it may have deleterious effects on the insurance market, including disruptions to the individual market risk pool, and it is likely to raise overall healthcare costs.”

227. And CMS further explained that “there is potential for financial harm to a consumer when a health care provider or provider-affiliated organization (including a non-profit organization affiliated with the provider) steers people who could receive or are receiving benefits under Medicare and/or Medicaid to enroll in an individual market plan. The potential harm is particularly acute when the steering occurs for the financial gain of the health care provider through higher payment rates without taking into account the needs of these beneficiaries. People who are steered from Medicare and Medicaid to the individual market may also experience a disruption in the continuity and coordination of their care as a result of changes in access to their network of providers, changes in prescription drug benefits, and loss of dental care for certain Medicaid beneficiaries.”

228. CMS also stated that “[m]oreover, *it is unlawful* to enroll an individual in individual market coverage if they are known to be entitled to benefits under Medicare Part A, enrolled in Medicare Part B, or receiving Medicaid benefits.” (emphasis added.)

229. Finally, CMS made it clear that “offering premium and cost-sharing assistance in order to steer people eligible for or receiving Medicare and/or Medicaid benefits to individual market plans for a provider’s financial gain is an inappropriate action that may have negative impacts on patients.”

230. CMS stated that “CMS is strongly encouraging any provider or provider-affiliated organization that may be currently engaged in such a practice to end the practice.”

231. On August 18, 2016, following the release of its RFI, CMS’s Center for Program Integrity also sent a letter to all Medicare-enrolled dialysis facilities, including, on information and belief, ARAH, ARA LLC, and ARM.

232. In that letter, CMS reiterated its “serious concerns” about providers inappropriately steering people eligible for or receiving Medicare and/or Medicaid benefits into individual market plans.

233. In addition to outlining the significant number of harms that steering causes for patients, consumers, and the insurance markets generally, CMS stated that “in the case of an individual actually receiving Medicare and/or Medicaid benefits, as opposed to potentially eligible for such benefits, section 1882(d)(3)(i)(II) of the Social Security [Act] prohibits selling such a person insurance coverage knowing that it duplicates such Medicare and/or Medicaid benefits.” CMS then stated that “[u]nder section 1882(d)(3)(A)(ii), this act is punishable by imprisonment of up to five years and/or civil money penalties.”

234. CMS closed its letter to dialysis providers by stating “[i]ndividuals should receive health care services from the appropriate program or plan, and individual market risk pools should not be interfered with by inappropriate steering of consumers

who otherwise should be receiving care through the Medicare and/or Medicaid programs.”

235. On August 19, 2016, AKF issued a press release in which it acknowledged “the legitimate concern expressed by CMS of possible inappropriate steering of patients into insurance marketplace plans” and stated “[w]e agree with CMS that everything that can be done, should be done to prevent steering.”

236. Less than two months after CMS told dialysis providers that it was looking into addressing their efforts to steer ESRD patients onto commercial plans by routing premium payments through third parties like AKF, both DaVita and ARAH announced that they would temporarily suspend support for applications to AKF for charitable premium assistance by patients enrolled in minimum essential Medicaid coverage who were seeking additional coverage on a 2017 ACA plan. DaVita made the announcement on October 31, 2016, while ARAH made the announcement on November 10, 2016. DaVita estimated that its annualized operating income would decrease by a whopping \$140 million if it could not continue supporting applications to AKF for patients with minimum essential Medicaid coverage, while ARAH estimated that its change would negatively impact its annualized adjusted EBITDA by \$17 million. DaVita further estimated that its annualized operating income would decrease by an additional \$90 million if it had to stop supporting applications to AKF for all ESRD patients on ACA plans, while ARAH estimated that if it had to take those same additional steps its annualized EBITDA would decrease by another \$7 million.

237. In the wake of CMS’s RFI, several individuals employed by dialysis providers submitted comments suggesting that dialysis providers was inappropriately coordinating with AKF to steer patients onto commercial plans. For example, on October 5, 2016, an anonymous kidney transplant social worker filed a comment noting that a major dialysis provider “has inappropriately steered all pts on medical assistance to individual market plans,” stating that “[t]he dialysis [company] provides

contributions to American Kidney Fund to pay the premiums and then dialysis gets reimbursed at a higher rate.” That same day, another anonymous social worker stated that a major dialysis company had required social workers “to ‘educate’ the patients with marketing material [the provider] designed specifically to entice the patient into enrolling in a secondary private payer plan[.]” The social worker also noted that the provider “assured our most vulnerable population of patients that they would not have to worry about paying their health insurance premium because our Insurance Counselors would preapprove them for the AKF HIPP grant,” and observed that “[m]eanwhile, [the provider] had no idea whether or not this would cause the patient to incur other out-of-pocket expenses like co-pays or a portion of their bill in an 80/20 PPO plan,” and stated “I knew this was an unethical practice.” That same day, yet another social worker submitted a comment, noting that large dialysis providers were incentivizing their employees to use AKF funding and other forms of unethical persuasion to steer patients onto commercial plans.

238. On December 14, 2016 CMS issued an interim final rule (“the IFR”) designed to address dialysis providers’ improper efforts to steer patients onto commercial plans by using third parties like AKF to pay their premiums.

239. In explaining the basis for the IFR, CMS explained that the problem of dialysis providers “offering to pay for, or arrange payment for” commercial insurance premiums appeared to be “widespread” (i.e., not limited to Florida, Ohio or any other particular state). CMS also noted that, in response to its earlier RFI, it had received information that “providers and suppliers [were] influencing enrollment decisions in ways that put the financial interest of the supplier above the needs of patients” – in other words, dialysis providers were not merely “educating patients,” they were misleading patients about insurance options based on the dialysis providers’ own financial interests. CMS noted the “strong financial incentive for [dialysis] providers to use premium payments to steer as many patients as possible onto commercial plans.”

And CMS explained that providers' coordination with third parties like AKF who assist only patients who remain on dialysis, and who refuse to support patients who receive kidney transplants, causes significant harm to these patients, by interfering with transplant readiness, exposing the patients to additional health care costs, and increasing the risk of coverage disruptions. CMS also noted the significant "lack of transparency" in how third-party premium payments were being made.

240. The IFR that CMS issued required dialysis providers like ARAH, ARA LLC, and ARM who indirectly pay patient premiums by routing money through third parties like AKF to provide accurate information to patients about their health coverage options as well as their rights to know about their dialysis provider's relationship with the third parties with which they have a financial relationship. The IFR also required providers to tell insurance companies when third-parties will make payments for those companies' patient members and obtain assurance from the companies that they will accept payments for the duration of the relevant insurance plan year. The IFR makes it clear that if such assurances are not obtained, providers must ensure that they or the third parties they use to pay patient premiums do not pay those premiums for the affected patients.<sup>1</sup>

**COUNT I - VIOLATION OF FLORIDA'S DECEPTIVE AND UNFAIR  
TRADE PRACTICES ACT  
(ARA LLC, ARM, and ARAH)**

241. UHC of Florida incorporates by reference paragraphs 1 - 191 and 206 - 240 above as if fully set forth herein and further alleges as follows.

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<sup>1</sup> DaVita and others brought suit to enjoin the rule from going into effect on January 13, 2017 claiming a technical departure from procedural rules. On January 12, 2017, the judge in that case issued a temporary injunction and set a hearing on the preliminary injunction for January 18, 2017. Whether the rule goes into effect is irrelevant to United's claims, but CMS's findings further support United's claims and demonstrate an industry-wide and nationwide problem.

242. Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201 *et seq.*, declares to be unlawful "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce." Fla. Stat. § 501.24(1). The statute emphasizes that its provisions are to be "construed liberally" to "protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts and practices in the conduct of any trade or commerce." Fla. Stat. § 501.202(2).

243. One can violate FDUTPA in two ways: through "*per se*" violations and through "traditional" violations.

244. A *per se* FDUTPA violation stems from the violation of "[a]ny law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition or unfair, deceptive, or unconscionable acts or practices." Fla. Stat. § 501.203(3)(c).

245. A "traditional" FDUTPA violation stems from a deceptive act or unfair practice that causes actual damages. *See KC Leisure, Inc. v. Haber*, 972 So. 2d 1069, 1073 (Fla. Dist. Ct. App. 5th Dist. 2008).

246. A deceptive act or practice includes a representation, omission, or other act or practice that is likely to mislead a consumer acting reasonably under the circumstances to the consumer's detriment. *See PNR, Inc. v. Beacon Prop. Mgmt., Inc.*, 842 So. 2d 773, 777 (Fla. 2003).

247. An unfair act or practice includes an act or practice that offends established public policy, or is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers. *See Rollins, Inc. v. Butland*, 951 So.2d 860, 869 (Fla. 2d DCA 2006).

248. ARA LLC, ARM, and ARAH are and have been engaged in trade and commerce in the State of Florida.

249. ARA LLC, ARM, and ARAH have sought to specifically harm Florida consumers in the execution of their deceptive and fraudulent scheme.

250. UHC of Florida and its plan members are consumers under FDUTPA. *See* Fla. Stat. § 501.203(7).

251. UHC of Florida has been injured by ARA LLC's, ARM's, and ARAH's unfair or deceptive practices in the course of buying and paying for medical services that ARA rendered unlawfully and sold in the State of Florida.

252. ARA LLC's and ARM's business practices constitute both *per se* and traditional violations of FDUTPA.

253. ARA LLC's and ARM's acts and practices constitute *per se* FDUTPA violations because they violate statutes that proscribe unfair methods of competition and unfair, deceptive, or unconscionable acts or practices, including Fla. Stat. § 817.234 (prohibiting false and fraudulent insurance claims), Fla. Stat. § 817.505 (prohibiting patient brokering), and Fla. Stat. § 456.054 (prohibiting kickbacks), as described above.

254. ARAH's acts and practices constitute *per se* FDUTPA violations because they violate Fla. Stat. § 456.054(1) and Fla. Stat. § 817.505(1)(a) and (d), as described above.

255. ARA LLC's, ARM's, and ARAH's unlawful acts and practices affected at least each of the claims for services rendered in Florida identified in Exhibit A, and have caused significant economic harm to UHC of Florida because they have caused UHC of Florida to make substantial benefits payments to, and inuring to the benefit of, ARA LLC and ARM, and realized by ARAH, that UHC of Florida was not obligated to make.

256. ARA LLC's and ARM's acts and practices also constitute traditional violations of FDUTPA.

257. ARA LLC and ARM deceived UHC of Florida in connection with the claims submitted for dialysis services rendered to the UHC of Florida plan members, including those listed on Exhibit A.

258. In submitting or causing to be submitted those claims, ARA LLC and ARM misrepresented that: (a) the charges stated in those claims were for services that had been rendered lawfully and consistent with public policy; (b) they had collected or would make a good faith effort to collect the corresponding cost-sharing obligations from that plan member; and (c) they had neither paid those members' premiums nor caused those members' premiums to be paid by an unauthorized third party.

259. In submitting or causing to be submitted those claims, ARA LLC and ARM also omitted and failed to disclose that: (a) they had waived or failed to collect copay, deductible, and coinsurance obligations for those members; (b) they had coordinated with AKF to ensure that UHC of Florida plan members received prohibited third-party payments, contributions, or reimbursements for their insurance premiums; (c) they had steered the patients onto UHC of Florida's commercial plan for the purposes of their own financial gain; and (d) that the services for which UHC of Florida was being charged had been rendered pursuant to intentional violations of the Florida civil and criminal statutes discussed above.

260. ARA LLC and ARM failed to disclose this information, despite having a special obligation as a healthcare provider and a special relationship of trust and confidence toward UHC of Florida that gave rise to a duty to speak and not mislead.

261. ARA LLC and ARM also deceived vulnerable ESRD patients by steering them away from Medicaid and onto UHC of Florida plans for ARA's financial gain, and to the detriment of the ESRD patients.

262. ARA LLC and ARM deceived and inappropriately steered ESRD patients onto UHC of Florida commercial plans by: (a) falsely telling them it was in their best interest to move away from primary Medicaid coverage in favor of UHC of Florida's commercial plan; (b) promising cost-sharing obligation waivers and third-party premium payments in exchange for their agreement to switch their primary insurance coverage and continue receiving dialysis services from ARA LLC and ARM; (c) failing

to tell them that the UHC of Florida plan they were being steered onto prohibited third-party premium assistance from provider-affiliated groups like AKF and required members to cover their cost-sharing obligations, despite knowing as much; and (d) failing to explain how switching away from Medicaid would disrupt their care, increase their financial exposure, and make it more difficult for them to get treatment for other medical conditions.

263. ARA LLC's and ARM's deception and inappropriate steering misled ESRD patients to their detriment.

264. ARA LLC's and ARM's acts and practices constitute the type of unfair, unethical, and inappropriate steering about which CMS has expressed concern and has said dialysis providers must stop.

265. ARA LLC's and ARM's steering is both unethical and injurious to specific patients and the public at large, as it pushes patients into plans that are less suited to their medical and financial circumstances, causes disruptions in the continuity and coordination of their care, disrupts the individual healthcare market risk pool, and causes overall healthcare costs to rise, all in service of one primary purpose - maximizing ARA LLC's and ARM's financial gain.

266. ARA LLC's and ARM's misrepresentations and omissions, as well as their inappropriate steering scheme, misled UHC of Florida to its detriment and caused UHC of Florida to make substantial payments to, and that directly benefitted, ARA LLC and ARM that, unbeknownst to UHC of Florida, were never owed.

267. UHC of Florida has retained the undersigned firm to represent it in this action and is entitled to recover its attorney's fees pursuant to the provisions of Fla. Stat. § 501.2105 and Fla. Stat. § 501.211(2).

268. In addition to authorizing damages, FDUTPA authorizes declaratory and injunctive relief for violations of its provisions. *See* Fla. Stat § 501.211(1).

269. By virtue of the foregoing, and consistent with the provisions of Fla. Stat. § 501.211, UHC of Florida seeks: (a) damages for benefits paid on the unlawful and deceptive claims ARA LLC and ARM submitted to UHC of Florida, plus attorney's fees, costs, and interest, (b) a declaratory judgment declaring that ARAH's, ARA LLC's, and ARM's acts and practices are unfair and deceptive in violation of FDUTPA, (c) an order enjoining ARAH, ARA LLC, and ARM from continuing to engage in such unfair and deceptive acts and practices, and (d) any other relief the Court deems just and proper.

**COUNT II - FRAUD**  
**(ARA LLC and ARM)**

270. United incorporates by reference paragraphs 1 - 201 and 206 - 240 as if fully set forth herein and further alleges as follows.

271. In and in connection with at least all of the claims set forth in Exhibit A, ARA LLC and ARM knowingly made material misrepresentations and omissions to United with the intent to induce United to rely on those misrepresentations and omissions and to make benefits payments for the associated claims, as described in the paragraphs below.

272. The charges contained in the claims submitted to United by or on behalf of ARA LLC and ARM are material information related to United's determination of whether the claims are payable and, if so, in what amount they are to be paid.

273. That ARA LLC and ARM have waived United plan members' copay, deductible, and coinsurance obligations is material information related to United's determination of whether claims submitted by or on behalf of ARA LLC and ARM are payable.

274. That ARA LLC and ARM have coordinated with AKF to pay plan members' insurance premiums is material information related to United's determination of whether members are eligible for coverage under United's plan and,

consequently, whether claims submitted by or on behalf of ARA LLC and ARM are payable.

275. That ARA LLC and ARM have steered patients on or eligible for Medicaid into United's plans to maximize their revenues and profits is material information related to United's determination of whether claims submitted by or on behalf of ARA LLC and ARM are payable.

276. The submission of a claim constitutes a certification and representation that the information shown on the claim is true, accurate, and complete, and that the submitter did not knowingly or recklessly disregard or misrepresent or conceal material facts.

277. In submitting or causing to be submitted claims seeking reimbursement for services ARA LLC and ARM provided to a United plan member, ARA LLC and ARM represented that the charges stated in those claims were for services that had been rendered lawfully and consistent with public policy.

278. Those representations, as ARA LLC and ARM knew at the time they were made, were false and made with the intent to induce United to make payments on the claims.

279. With respect to claims for services rendered in Florida, the services had been rendered pursuant to intentional violations of civil and criminal statutes related to the provision of medical services and treatments, including Florida's prohibition of insurance fraud, Florida's Patient Brokering Act, Florida's Anti-Kickback Statute, and FDUTPA, as described above.

280. With respect to claims for services rendered in both Florida and Ohio, the services had been rendered contrary to public policy, as patients had been inappropriately steered by ARA LLC and ARM into United's commercial plans for their financial gain.

281. Each time ARA LLC and ARM submitted a claim seeking reimbursement for services provided to a United plan member, they effectively represented that they had collected or would make a good faith effort to collect the corresponding cost-sharing obligations from that plan member.

282. Those representations, as ARA LLC and ARM knew at the time they were made, were false with respect to claims for services rendered in both Florida and Ohio, and were made with the intent to induce United to make payments on the claims.

283. Each time ARA LLC and ARM submitted a claim seeking reimbursement for services provided to a United plan member, they effectively represented that they had neither paid those members' premiums nor caused those members' premiums to be paid by an unauthorized third party.

284. Those representations, as ARA LLC and ARM knew at the time they were made, were false with respect to claims for services rendered in both Florida and Ohio, and made with the intent to induce United to make payments on the claims.

285. ARA LLC and ARM had superior and special knowledge of their practices of waiving United plan members' copay, deductible, and coinsurance obligations, of coordinating with AKF to pay United plan members' premiums, of steering patients into United plans for its own financial gain, and of rendering services pursuant to violations of criminal and civil statutes as described above, which is not discoverable by ordinary observation.

286. ARA LLC and ARM had a duty to disclose to United information material to the claims ARA LLC and ARM were causing to be submitted for reimbursement and benefits payments, so as to not mislead United.

287. ARA LLC and ARM, as well as United, understood that, under the circumstances, ARA LLC and ARM had a special relationship of trust and confidence toward United that gave rise to a duty to speak and disclose material information regarding the claims being submitted.

288. In fact, ARAH's "Code of Ethics and Conduct," which applies to ARAH, ARA LLC, ARM, and ARAH's other subsidiaries and controlled entities, emphasizes that "[a]s healthcare providers, we have a special obligation to ensure accurate information in patient medical and billing records." The Code also emphasizes that "[a]ccurate documentation is essential to quality patient care, and to compliant billing."

289. ARA LLC and ARM knew or should have known that the practice of waiving United plan members' copay, deductible, and coinsurance obligations, the practice of coordinating with AKF to pay United plan members' premiums, the practice of steering patients into United plans for its own financial gain, and the practice of rendering services pursuant to violations of criminal and civil statutes as described above should have been disclosed to United.

290. In connection with the claims submitted to United for payment, ARA LLC and ARM failed to disclose that they had waived or failed to collect copay, deductible, and coinsurance obligations for United plan members.

291. ARA LLC and ARM also failed to disclose that they had coordinated with AKF to ensure that United plan members received prohibited third-party payments, contributions, or reimbursements for their insurance premiums.

292. And ARA LLC and ARM failed to disclose that they had steered the patients onto United's commercial plans for the purposes of ARA's own financial gain.

293. With respect to claims submitted for services provided to UHC of Florida plan members, ARA LLC and ARM failed to disclose that the services for which UHC of Florida was being charged had been rendered pursuant to intentional violations of civil and criminal statutes related to the provision of medical services and treatments, including, without limitation, Florida's prohibition of insurance fraud, Florida's Patient Brokering Act, Florida's Anti-Kickback Statute, and FDUTPA, as described above.

294. ARA LLC and ARM failed to disclose the aforementioned material information to United, despite knowing that the failure to do so would induce United to act contrary to how it would act were it provided the material information.

295. In failing to disclose the aforementioned material information to United, ARA LLC and ARM acted in bad faith.

296. ARA LLC and ARM intended for United to rely on the aforementioned misrepresentations and omissions in order to induce United to pay benefits to ARA LLC and ARM for dialysis services rendered to United plan members at ARA owned and controlled clinics.

297. United reasonably relied on the aforementioned misrepresentations and omissions and made payments on the submitted claims, including those claims identified in Exhibit A. For example, United reasonably relied on ARA LLC and ARM to lawfully collect the members' financial responsibility as required under the terms of the members' plans. As a result, the amount paid by United varied. In other words, the amount United paid for each dialysis service depended on the amount of copay, coinsurance and/or deductible ARA LLC and ARM presumably collected from the member at the time of each service, as well as whether United's records reflected (based on its reliance that ARA LLC and ARM had routinely collected the member's financial responsibility) that the member had reached his annual out-of-pocket maximum.

298. As a direct and proximate result of ARA LLC's and ARM's misrepresentations and omissions, United has been damaged in a substantial amount to be determined at trial, exclusive of interest and costs.

299. By virtue of the foregoing, United is entitled to an award of compensatory and punitive damages, together with interest and costs, an injunction prohibiting ARA LLC and ARM from continuing to engage in the tortious conduct described above, and any other relief the Court deems just and proper.

**COUNT III - NEGLIGENT MISREPRESENTATION AND OMISSION**  
**(ARA LLC and ARM)**

300. United incorporates by reference paragraphs 1 – 201 and 206 – 240 as if fully set forth herein and further alleges as follows.

301. The charges contained in the claims submitted to United by or on behalf of ARA LLC and ARM are material information related to United's determination of whether the claims are payable and, if so, in what amount they are to be paid.

302. That ARA LLC and/or ARM has waived United plan members' copay, deductible, and coinsurance obligations is material information related to United's determination of whether claims submitted by or on behalf of ARA LLC and ARM are payable.

303. That ARA LLC and/or ARM has coordinated with AKF to pay plan members' insurance premiums is material information related to United's determination of whether claims submitted by or on behalf of ARA LLC and ARM are payable.

304. That ARA LLC and/or ARM has steered patients on or eligible for Medicaid into United's plans to maximize ARA's revenues and profits is material information related to United's determination of whether claims submitted by or on behalf of ARA LLC and ARM are payable.

305. The submission of a claim constitutes a certification and representation that the information shown on the claim is true, accurate, and complete, and that the submitter did not knowingly or recklessly disregard or misrepresent or conceal material facts.

306. By submitting claims seeking reimbursement for services provided to a United plan member, ARA LLC and ARM represented that the charges stated in those claims were for services that had been rendered lawfully and consistent with public policy.

307. Those representations were false, and ARA LLC and ARM either knew the representations were false, made them without knowledge of their truth or falsity, or made them under circumstances in which ARA LLC and ARM ought to have known of their falsity.

308. With respect to claims for services rendered in Florida, the services had been rendered pursuant to intentional violations of civil and criminal statutes related to the provision of medical services and treatments, including Florida's prohibition of insurance fraud, Florida's Patient Brokering Act, Florida's Anti-Kickback Statute, and FDUTPA, as described above.

309. With respect to claims for services rendered in both Florida and Ohio, the services had been rendered contrary to public policy, as patients had been inappropriately steered by ARA LLC and ARM into United's commercial plans for their financial gain.

310. By submitting claims seeking reimbursement for services ARA provided to a United plan member, ARA LLC and ARM represented that they had collected or would make a good faith effort to collect the corresponding cost-sharing obligations from that plan member.

311. Those representations were false with respect to claims submitted for services rendered in both Florida and Ohio, and ARA LLC and ARM either knew the representations were false, made them without knowledge of their truth or falsity, or made them under circumstances in which ARA LLC and ARM ought to have known of their falsity.

312. By submitting claims seeking reimbursement for services ARA provided to a United plan member, ARA LLC and ARM represented that they had neither paid those members' premiums nor caused those members' premiums to be paid by an unauthorized third party.

313. Those representations were false with respect to claims submitted for services rendered in both Florida and Ohio, and ARA LLC and ARM either knew the representations were false, made them without knowledge of their truth or falsity, or made them under circumstances in which ARA LLC and ARM ought to have known of their falsity. ARA LLC and ARM intended or expected that United would rely on its misrepresentations.

314. United justifiably relied on ARA LLC and ARM's misrepresentations and was damaged as a result by making payments on the claims that were submitted.

315. ARA LLC and ARM had superior and special knowledge of their practices of waiving UHC of Florida's plan members' copay, deductible, and coinsurance obligations, of coordinating with AKF to pay UHC of Florida's plan members' premiums, of steering patients into UHC of Florida plans for its own financial gain, and of rendering services pursuant to violations of criminal and civil statutes as described above, which is not discoverable by ordinary observation.

316. ARA LLC and ARM had a duty to disclose to UHC of Florida information material to the claims they were submitting for reimbursement and benefits payments.

317. ARA LLC and ARM, as well as UHC of Florida, understood that, under the circumstances, ARA LLC and ARM had a special relationship of trust and confidence toward UHC of Florida that gave rise to a duty to speak and disclose material information regarding the claims being submitted.

318. In fact, ARAH's adopted "Code of Ethics and Conduct," which applies to ARAH, ARA LLC, ARM, and ARAH's other subsidiaries and controlled entities, emphasizes that "[a]s healthcare providers, we have a special obligation to ensure accurate information in patient medical and billing records." The Code also emphasizes that "[a]ccurate documentation is essential to quality patient care, and to compliant billing."

319. In connection with the claims submitted to UHC of Florida for services rendered to UHC of Florida plan members, ARA LLC and ARM negligently, and without exercising reasonable care or competence, failed to disclose that: (a) they had waived or failed to collect copay, deductible, and coinsurance obligations for those members; (b) they had coordinated with AKF to ensure that UHC of Florida plan members received prohibited third-party payments, contributions, or reimbursements for their insurance premiums; (c) they had steered the patients onto UHC of Florida's commercial plan for the purposes of their own financial gain; and (d) that the services for which UHC of Florida was being charged had been rendered pursuant to intentional violations of civil and criminal statutes related to the provision of medical services and treatments, including, without limitation, Florida's prohibition of insurance fraud, Florida's Patient Brokering Act, Florida's Anti-Kickback Statute, and FDUTPA, as described above.

320. UHC of Florida justifiably relied on ARA LLC's and ARM's omissions and was damaged as a result by making payments on the claims that were submitted.

321. By virtue of the foregoing, United is entitled to an award of compensatory damages, including consequential damages, together with interest and costs, an injunction prohibiting ARA LLC and ARM from continuing to engage in the tortious conduct described above, and any other relief the Court deems just and proper.

**COUNT IV - UNJUST ENRICHMENT**  
**(ARA LLC, ARM, and ARAH)**

322. United incorporates by reference paragraphs 1 - 201 and 206 - 240 as if fully set forth herein and further alleges as follows.

323. United has conferred a benefit on ARA LLC, ARM, and ARAH in the form of significant payments of benefits based on claims and charges for dialysis treatments and services and ARA LLC, ARM, and ARAH have knowledge of that benefit.

324. ARA LLC, ARM, and ARAH have received a direct benefit from those payments.

325. ARA LLC, ARM, and ARAH have voluntarily accepted and retained the payments, and revenues from those payments, for dialysis services made to them by United.

326. In fact, on ARAH's August 10, 2016 second quarter 2016 earnings conference call, one of ARAH's corporate executives, referring to ARAH's business operations as a consolidated whole and the claims at issue in this lawsuit, stated that: "we received \$1.9 million" worth of payments from United "in the month of May" and that "we recorded those as a vast majority of those payments in our payer refund liability account[.]"

327. Under the circumstances of this case, as set forth in the paragraphs above, it would be inequitable for ARA LLC, ARM, and ARAH to retain the payments and benefit they received.

328. The money ARA LLC, ARM, and ARAH have received from United belongs in equity and good conscience to United.

329. By virtue of the foregoing, United is entitled to recover the substantial amount of benefits payments, and the revenues from those payments, ARA LLC, ARM, and ARAH have improperly retained.

**COUNT V - TORTIOUS INTERFERENCE WITH CONTRACT**  
**(ARA LLC and ARM)**

330. United incorporates by reference paragraphs 1 - 201 and 206 - 240 as if fully set forth herein and further alleges as follows.

331. ARA LLC's and ARM's conduct constitutes tortious interference with a contractual relationship.

332. Each of the members for whom ARA LLC and ARM submitted claims and received payment from United received healthcare benefits pursuant to a benefit plan insured and/or administered by United.

333. The terms of members' benefit plans were set forth in individual medical contracts between the members and United.

334. These contracts contained provisions that required members to satisfy their payment responsibilities (e.g. copayments, coinsurance, and/or deductibles) by making payments to providers.

335. These contracts also contained provisions that required members to pay their premiums and prohibited members from accepting any direct or indirect contributions or reimbursements by or on behalf of any unauthorized third party for any portion of the premiums for coverage under the contracts.

336. ARA LLC and ARM knew or reasonably should have known that their patients' United plans required them to satisfy their payment responsibilities and pay their own premiums, without accepting contributions or reimbursements by or on behalf of any unauthorized third party such as AKF.

337. Despite this knowledge, ARA LLC and ARM intentionally procured the breach of members' contracts by waiving their payment responsibilities and by coordinating with AKF to pay members' premiums and/or cause members to accept unauthorized third party contributions or reimbursements for their premiums.

338. ARA LLC's and ARM's procurement of these breaches was without justification or privilege.

339. The breaches ARA LLC and ARM caused have resulted in significant damages to United in the form of unnecessary payments United made to ARA LLC and ARM subsequent to those breaches.

340. By virtue of the foregoing, United is entitled to an award of compensatory damages, including consequential damages, together with interest and costs, an

injunction prohibiting ARA LLC and ARM from continuing to engage in the tortious conduct described above, and any other relief the Court deems just and proper.

**COUNT VI - AIDING AND ABETTING FRAUD**  
**(ARAH)**

341. UHC of Florida incorporates by reference paragraphs 1 – 188, 206 – 240, and 270 – 299 above as if fully set forth herein and further alleges as follows.

342. As set forth above, there existed an underlying fraud committed by ARA LLC and ARM against UHC of Florida with respect to claims for services rendered to Florida patients.

343. ARAH knew of this underlying fraud. ARAH knew that ARA LLC and ARM had steered patients into UHC of Florida’s plan and, in connection with the claims submitted to UHC of Florida for payment, had misrepresented and failed to disclose the fact that the patients had been steered, as well as the unlawful means through which they had been steered.

344. ARAH provided substantial assistance to advance the commission of the fraud by concocting and developing the plan to use patient steering, cost-share waivers, and premium payments (routed through AKF) to move dialysis patients onto UHC of Florida’s exchange plan and extract exorbitant benefits payments, encouraging and directing ARA LLC and ARM to implement the scheme, and claiming revenues derived from the scheme, all without disclosing the scheme to UHC of Florida.

345. As a proximate result of ARAH’s aiding and abetting of the fraud, UHC of Florida has been damaged in an amount to be proven at trial.

**COUNT VII - CIVIL CONSPIRACY**  
**(ARA LLC, ARM, and ARAH)**

346. United incorporates by reference paragraphs 1 – 201, 206 – 299, and 330 – 345 as if fully set forth herein and further alleges as follows.

347. ARA LLC and ARM have conspired with AKF to unlawfully, fraudulently, and deceitfully procure funds from United through FDUTPA violations, fraud, and tortious interference with contract, while ARAH has conspired with AKF to unlawfully procure funds from UHC of Florida through FDUTPA violations, and by aiding and abetting the fraudulent procurement of those funds, as described above.

348. Upon information and belief, ARAH executives directed ARA LLC and ARM to shift patients from primary government insurance plans onto United's commercial insurance plans for the sole purpose of improving ARAH's, ARA LLC's, and ARM's revenues and profits and without regard to the best interests of the patients, and conspired with AKF to aid and abet the scheme.

349. In order to achieve and accomplish the aforementioned unlawful acts and objectives, ARM and AKF, ARA LLC and AKF, and ARAH and AKF, conspired and agreed to calculate, and to have ARM and other entities in the ARA corporate structure make, large amounts of "charitable donations" to AKF, which AKF would then use to pay ARA LLC's, and ARM's patients premiums so that those patients could be enrolled in United's commercial plans from which ARA LLC and ARM could collect increased benefits payments, and ARAH, ARA LLC, and ARM could realize increased revenues. ARAH, ARA LLC, ARM and AKF understood that this deceptive and unlawful arrangement would be mutually beneficial: ARAH, ARA LLC, and ARM would be able to increase revenues and profits, and AKF would be able to continue or increase the size of "donations" it received, in order to continue perpetuating the scheme.

350. The overt acts ARA LLC, ARM, ARAH, and AKF have taken to further and perpetuate this unlawful scheme are described with particularity in this complaint in the Counts for FDUTPA violations, fraud, tortious interference with contract, and aiding and abetting fraud. These acts include: (a) ARAH, ARA LLC, and ARM concocting the core elements of the patient steering scheme, failing to disclose the scheme, and acquiring funds extracted through the scheme, (b) ARA LLC assisting in

calculating, and ARM calculating and making, substantial donations to AKF, based on ARA LLC's and ARM's projections of how much ARA patients would receive, for AKF to use to pay those patients' premiums, (c) ARA LLC and ARM steering vulnerable patients away from primary Medicaid coverage and into United commercial plans by telling them that AKF would pay their premiums, (d) ARA LLC and ARM filling out and submitting patient applications to AKF on behalf of ARA patients, (e) AKF approving the applications submitted pursuant to the scheme, (f) AKF paying the premiums of ARA patients to induce those patients to continue their patronage of ARA dialysis services under commercial circumstances more favorable to ARAH, ARA LLC, ARM, and AKF, (g) AKF paying ARA patient premiums because ARM and other entities in the ARA corporate structure had "donated" amounts proportional to ARA LLC's and ARM's expectation of the amount of money its patients' would draw from the AKF's pool of HIPPA funds (h) AKF paying the premiums of ARA patients despite knowing that United's commercial plans require members to pay their own premiums and prohibit accepting third-party assistance from groups like AKF, and (i) ARA LLC and ARM submitting claims or causing claims to be submitted to United without disclosing that ARM and other ARA entities were sending money to AKF, which AKF was using to pay patient premiums, or that ARA LLC and AKF, and ARM and AKF, were working together to steer patients away from Medicaid and enroll them into United's commercial plans for ARA LLC's, ARM's, and AKF's mutual benefit.

351. The concerted actions of ARM and AKF, ARA LLC and AKF, and ARAH and AKF, have caused United to be damaged in an amount to be determined at trial.

352. Alternatively, even if the actions taken by ARM and AKF, ARA LLC and AKF, and ARAH and AKF, do not constitute any separately actionable tort or other wrong, the actions still constitute an unlawful conspiracy.

353. ARM and AKF, ARA LLC and AKF, and ARAH and AKF, possess a "peculiar power of coercion," including over United, by virtue of their combination,

relationship, and economic influence when acting together as a provider and provider-affiliated 501(c)(3) charity that individual providers acting alone in the healthcare space do not possess. See *Walters v. Blankenship*, 931 So. 2d 137, 140 (Fla. Dist. Ct. App. 5th Dist. 2006) (“an alternative basis for a civil conspiracy claim exists where the plaintiff can show some ‘peculiar power of coercion’ possessed by the conspirators by virtue of their combination, which an individual acting alone does not possess.” (internal citations omitted)).

354. ARM and AKF, ARA LLC and AKF, and ARAH and AKF, acted maliciously in conspiring to steer vulnerable dialysis patients away from Medicaid and onto United’s plans, and in conspiring to aid and abet fraud, in order to extract higher reimbursement payments from United and inflate ARAH’s, ARA LLC’s, and ARM’s revenues and profits, and to ensure that AKF’s coffers remained full.

355. This concerted action has caused United to be damaged by making substantial amounts of payments on claims that were fraudulent and the product of unlawful, unfair, and deceptive practices.

356. By virtue of the foregoing, United is entitled to an award of compensatory and punitive damages, together with interest and costs, an injunction prohibiting ARA LLC, ARM, and ARAH from continuing to engage in the tortious and unlawful conduct described above, and any other relief the Court deems just and proper.

**COUNT VIII - VICARIOUS LIABILITY**  
**(ARAH and ARA LLC)**

357. United incorporates by reference paragraphs 1 – 201, 206 – 329, and 330 – 340 as if fully set forth herein and further alleges as follows.

358. ARA LLC and ARM are agents of ARAH.

359. ARAH has held ARA LLC and ARM out as its agent and has acknowledged that ARA and ARM act and conduct business on ARAH’s behalf.

360. ARA LLC and ARM have accepted that undertaking.

361. ARAH has exercised significant control over ARA LLC and ARM with respect to the scheme and transactions at issue in this action and has directed the operations of ARA LLC and ARM so that ARA LLC and ARM would take the actions described above to steer patients onto United plans for the purpose of improving ARAH's "commercial mix" and increasing ARAH's revenues per treatment.

362. ARA LLC's and ARM's unlawful and tortious conduct has caused harm to United.

363. Alternatively, ARM is the agent of ARA LLC.

364. ARA LLC has held ARM out as its agent and has acknowledged that ARM acts and conducts business on its behalf, and ARM has accepted that undertaking.

365. ARA LLC has exercised significant control over ARM with respect to the scheme and transactions at issue in this action and has directed the operations of ARM so that ARM would take the actions described above for the purpose of benefitting ARA LLC.

366. ARM's unlawful and tortious conduct has caused harm to United.

367. Alternatively, ARA LLC and ARM are the alter egos of ARAH.

368. ARA LLC and ARM are mere instrumentalities of ARAH and ARAH's business, and function to achieve the purposes of ARAH.

369. ARAH has used ARA LLC and ARM for an improper purpose and to engage in fraudulent and unlawful conduct, which has caused harm to United.

370. Alternatively, ARM is the alter ego of ARA LLC.

371. ARM is a mere instrumentality of ARA LLC and function to achieve the purposes of ARA LLC.

372. ARA LLC has used ARM for an improper purpose and to engage in fraudulent and unlawful conduct, which has caused harm to United.

373. For the reasons alleged above, ARAH is therefore vicariously liable for the harm caused to United by ARA LLC's and ARM's unlawful and tortious conduct.

374. For the reasons alleged above, to the extent that it is not otherwise directly liable, ARA LLC is therefore vicariously liable for harm caused to United by ARM's unlawful and tortious conduct.

**COUNT IX - REQUEST FOR DECLARATORY RELIEF**  
**(ARAH, ARA LLC, and ARM)**

375. United incorporates by reference paragraphs 1 - 201 and 206 - 356 as if fully set forth herein and further alleges as follows.

376. There is an actual case and controversy between United (on the one hand), and ARAH, ARA LLC, and ARM (on the other hand) as to all of the claims and charges submitted to United for the payment of benefits pursuant to the scheme described herein.

377. United contends that the scheme is fraudulent, unlawful, and unfair, and that no payments of benefits are due to ARA LLC, ARM, or ARAH on any claims or charges that are pending or may be submitted in the future pursuant to ARA LLC's, ARM's, and ARAH's scheme. ARA LLC, ARM, and ARAH disagree.

378. There is a bona fide, present, and practical need for a declaration as to the illegality of ARAH's, ARA LLC's, and ARM's actions and whether United has the right to not pay the claims and charges implicated by ARAH's, ARA LLC's, and ARM's actions and scheme, including any pending or future claims.

379. Accordingly, United is entitled to a judgment pursuant to the federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, declaring that ARAH's, ARA LLC's, and ARM's actions and business practices are unlawful, and that any claims for payments of benefits submitted by ARA LLC and/or ARM to United pursuant to the scheme described herein are not payable and void as a matter of law and public policy.

**PRAYER FOR RELIEF**

WHEREFORE, United respectfully requests an award in its favor and granting the following relief:

- a. An award of both actual and consequential damages;
- b. An award of punitive damages as requested herein;
- c. Equitable relief as requested herein;
- d. Declaratory and injunctive relief as requested herein;
- e. An award of attorney's fees as requested herein;
- f. Costs of court;
- g. Prejudgment and post-judgment interest; and
- h. An award of any other relief in law or equity that the Court deems just and proper.

Dated: March 13, 2017

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was electronically filed on March 13, 2017 with the Clerk of Court using the CM/ECF system thereby sending a notice of electronic filing to all counsel of record on the service list below.

s/Michael R. Whitt  
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