

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

**GEORGE R. KABELLER, PEDRO
GONZALEZ and ALEXANDER KINGHORN,
on behalf of themselves and all others similarly
situated,**

PLAINTIFFS

vs.

Civil Action No.: _____

**ORLANDO REGIONAL HEALTHCARE
SYSTEM, INC; and AMERICAN HOSPITAL
ASSOCIATION,**

DEFENDANTS.

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

COME NOW, the Plaintiffs **GEORGE R. KABELLER, PEDRO GONZALEZ** and **ALEXANDER KINGHORN**, by and through the undersigned counsel of record, and file this Class Action Complaint, seeking monetary damages, injunctive and other equitable relief against the Defendants **ORLANDO REGIONAL HEALTHCARE SYSTEM, INC.**, (hereinafter referred to as “ORHS”) and **AMERICAN HOSPITAL ASSOCIATION** (hereinafter “AHA”); and in support thereof would show unto the Court the following to-wit:

**I.
INTRODUCTION**

Orlando Regional Healthcare System, Inc., is one of the largest health care systems in Central Florida, operating approximately eight (8) hospitals in Central Florida, including Orlando Regional Medical Center in Orlando, Florida. Defendant ORHS is a not-for-profit, 501(c) charitable, tax-exempt corporation that owns and manage hospitals and health-related facilities in the state of Florida. ORHS has operated free from federal and state taxes because it promised the

government that it would operate as a charity provider of health care for the uninsured and that it would not engage in business directly or indirectly, for the benefit of private interests. In reality, ORHS does just the opposite: it charges uninsured patients significantly more than those who have insurance, generally pursuing the poor or uninsured relentlessly by aggressive and humiliating collection techniques; and through either “connected” board members and/or physicians whose for-profit businesses are favored and subsidized by the “tax-free” organization, is rampantly violating the federal and state prohibition against profiteering by “private interests.”

ORHS and its confederates who employ the same business model have thereby amassed and hoarded billions of dollars in cash and marketable securities, which otherwise should be available to provide charity care to the uninsured who were contemplated by this tax exemption. Moreover, enormous property and revenues have been insulated from taxation, the effect of which has bestowed upon ORHS and its confederates greater liquidity than that possessed by most state and local governments.

The American Hospital Association is the national trade association for the nonprofit hospital industry, and serves as the representative for Defendant ORHS. The American Hospital Association has conspired with, and aids and abets, ORHS and its other nonprofit hospital members in carrying out their unfair, discriminatory, unconscionable and oppressive business practices.

This Complaint asks the Court to certify a Class of the intended beneficiaries of Defendant ORHS’ commitment to the government, more fully defined below, and to require it to honor the commitments for which it received its unique freedom from taxation.

II.
PARTIES

1. Plaintiff George R. Kabeller, is and was at all times relevant hereto, an adult resident citizen of Orlando, Florida.

2. Plaintiff Pedro Gonzalez, is and was at all times relevant hereto, an adult resident citizen of Orlando, Florida.

3. Plaintiff Alexander Kinghorn is, and was at all times relevant hereto, an adult resident citizen of Miami, Florida.

4. Defendant Orlando Regional Healthcare System, Inc., is a Florida not-for-profit corporation with its principal place of business located at 1414 Kuhl Avenue, Orlando, Florida. ORHS owns and operates eight (8) hospitals in Florida, including Orlando Regional Medical Center in Orlando, Florida.

5. American Hospital Association, is an Illinois not-for-profit corporation with its headquarters at One North Franklin, Chicago, Illinois. AHA is the national trade association for the nonprofit hospital industry, and serves as the representative for Defendant ORHS and its nonprofit hospital members.

III.
JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this controversy pursuant to 28 U.S.C. §1331 and 1367, because Plaintiffs' claims arise out of a federal contract between Defendant ORHS and the United States Government in which ORHS agreed to provide mutually affordable medical care to its uninsured patients in exchange for a tax exempt status under 26 U.S.C.

§501(c)(3). This Court also has subject matter jurisdiction of this controversy under 42 U.S.C. §1395 dd because, upon information and belief, Defendant ORHS conditioned providing emergency room medical care to the Plaintiffs and the Class on their ability to pay and on financial guarantees from the Plaintiffs and the Class. This Court further has subject matter jurisdiction of this controversy under 28 U.S.C. §1340 because Plaintiffs' claims arise out of ORHS' duties and obligations under 26 U.S.C. §501(c)(3).

7. Venue in this district is proper pursuant to 28 U.S.C. §1391(b).

IV. FACTS

8. Defendant ORHS represents itself as Florida based, tax exempt, charitable, nonprofit hospital system. ORHS is one of the largest health care systems in Central Florida operating 8 hospitals with over 1,500 beds. ORHS was formed in 1918 with a single hospital and now operates a number of hospitals in the Central Florida area including Orlando Regional Medical Center, Orlando Regional Lucerne Hospital, Orlando Regional Sand Lake Hospital, Orlando Regional South Seminole Hospital, Orlando Regional St. Cloud Hospital, South Lake Hospital, Arnold Palmer Hospital for Women & Children and M.D. Anderson Cancer Center Orlando. Defendant ORHS is one of the most financially successful hospital systems in the State of Florida with total revenue of \$900 million and net income of over \$32 million for 2002. ORHS also possesses over \$1.2 billion in assets.

9. Defendant ORHS entered into express and/or implied Agreements with the United States Government and the State of Florida to provide mutually affordable medical care to all of its patients in return for substantial tax exemptions. An express and/or implied contractual relationship

was thereby created between Defendant ORHS and the United States Government and the State of Florida to accomplish such purpose. ORHS' uninsured and medically indigent patients during the period between July 21, 1994 and July 21, 2004 were the express and/or implied intended third party beneficiaries of such Agreements.

10. Defendant ORHS receives a federal income tax exemption as a purported "charitable" institution under 26 U.S.C. §501(c)(3). Under §501(c)(3), Defendant ORHS is required to operate "exclusively" in furtherance of a charitable purpose, with no part of its operations attributable directly or indirectly to any noncharitable commercial purpose and with no part of their earnings inuring to the benefit of any private individual or entity. By accepting this favorable tax exemption, Defendant ORHS explicitly and/or implicitly agreed: to operate exclusively for charitable purposes; to provide an emergency room open to all of their uninsured patients without regard to their ability to pay for such care; to provide mutually affordable medical care to all of their uninsured patients; not to charge their uninsured patients the highest and full undiscounted cost for medical care; not to charge their uninsured patients a higher rate for medical care than its insured patients; to use their net assets and revenues to provide mutually affordable medical care to their uninsured patients; and not to pursue outstanding medical debt from their uninsured patients through humiliating collection efforts, lawsuits, liens and garnishments.

11. Defendant ORHS also receives state and local income, property and sales tax exemptions from the State of Florida under Fla. Stat.. §§ 196.192, 196.197, 199.183 and Fla. Const. Art. VII, § 3. Under § 199.183 in order for a nonprofit hospital to be exempt from taxation it must provide charitable services, a reasonable percentage of which shall be without cost to those unable to pay. Under § 196.192 a nonprofit hospital devoted to providing charitable care is exempt from

ad valorem taxes. By accepting these favorable state and local tax exemptions, ORHS explicitly and/or implicitly agreed: to operate exclusively for charitable purposes; to provide mutually affordable medical care to all of its uninsured patients; not to charge its uninsured patients the highest and full undiscounted cost of medical care; not to charge its uninsured patients a higher rate for medical care than its insured patients; to use its net assets and revenues to provide mutually affordable medical care to its uninsured patients; and not to pursue outstanding medical debt from its uninsured patients through humiliating collection efforts, lawsuits, liens and garnishments.

12. Despite its favorable tax exempt status and its substantial net revenues and asset reserves, Defendant ORHS has breached its Agreements with the United States Government, and the State of Florida by failing to provide emergency room medical care to its uninsured patients without regard to their ability to pay for such care; charging its uninsured patients the highest and full undiscounted cost for medical care at grossly inflated rates from the actual cost of providing such services; allowing noncharitable for-profit physician groups and service providers to derive profit from its tax exempt hospitals; by engaging in aggressive efforts to collect such medical debt from its uninsured patients through abusive, harassing, and humiliating collection lawsuits, liens, and garnishments; and upon information and belief providing discounted medical care to their Board of Directors and entities connected to its Board of Directors. ORHS' uninsured patients have therefore not received the benefit of the Agreements between ORHS and the United States Government and the State of Florida. These uninsured patients primarily consist of the working class who do not qualify for Medicaid but cannot afford private health insurance and/or cannot obtain health insurance through their employers.

13. Defendant ORHS sets its charges for medical services at highly inflated rates that bear no connection to the actual cost of providing the service. While Defendant ORHS gives private insurance companies and governmental third party payors like Medicare and Medicaid large discounts off this gross or “sticker price,” all of its uninsured patients are charged 100% of the full sticker price, which can be as large as twice as much charged to the insured for the same service. Defendant ORHS realize substantial revenues from this discriminatory charging practice. Defendant ORHS also realizes the highest profit per discharge on its uninsured patients who pay such grossly inflated prices.

14. Despite sizeable net revenues and its asset reserves, Defendant ORHS provide little to no charity care to its uninsured patients. ORHS’ level of charity care constitutes only a small amount of its gross charges. Defendant ORHS has never provided an amount of uncompensated care equal to its market share.

15. In addition, ORHS uses Enron-style accounting tricks to grossly distort the small amount of charity care it does provide to uninsured patients. Defendant ORHS reports this amount of charity care as the amount of gross charges-which are grossly inflated-rather than the actual cost of providing the service. Furthermore, upon information and belief, ORHS further exaggerates the amount of charity care that it does by simply referring to all bad-debt writes offs as charity care.

16. Before Defendant ORHS admits any patient, including its uninsured patients, into its hospitals and/or emergency rooms for medical care, it require patients to sign a form contract promising to pay them in full for unspecified and undocumented charges for medical care that are set by ORHS in its sole discretion.

17. Not only does Defendant ORHS charge its uninsured patients the highest rates for medical care, which they cannot afford to pay, it has also engaged in the uniform pattern and practice of aggressively pursuing such debt through abusive, humiliating, and harassing collection efforts, such as collection lawsuits, liens, and garnishments. Such lawsuits have driven many of ORHS' patients to bankruptcy and/or financial ruin.

18. Upon information and belief, while Defendant ORHS charges its uninsured patients the full undiscounted cost for medical care, it provides substantial discounts off the gross charges to its Board of Directors and entities owned, controlled or connected to its Board of Directors. These discounts are in direct violation of Defendant ORHS' obligations under 26 U.S.C. § 501(c)(3); Fla. Stat. §§196.192, 196.197, 199.183 and Fla. Const. Art. VII, § 3.

19. Defendant ORHS also allows numerous outside for-profit physician groups and service providers to use its tax-exempt hospitals to derive a profit. These for-profit physician groups and service providers practice in ORHS' taxpayer subsidized hospitals and then bill patients for work done at these tax-exempt hospitals. These for-profit physician groups and service providers are non-charitable entities which do not have a charitable mission or purpose. By allowing noncharitable for-profit entities with no charitable mission to derive a profit from its charitable tax-exempt hospitals, Defendant ORHS has not operated actually and exclusively for charitable purposes in violation of its obligations under 26 U.S.C. §501(c)(3), and Fla. Stat. §§196.192, 196.197, 199.183 and Fla. Const. Art. VII, § 3.

20. The Defendant American Hospital Association ("AHA"), is the national trade association for the nonprofit hospital industry, and serves as the representative for Defendant ORHS and its nonprofit hospital members. According to its website, the AHA "ensures that members'

perspectives and needs are heard and addressed in national health policy development, legislative and regulatory debates, and judicial matters.”

21. AHA, through internal memos called “white papers” and other publications, provides substantial assistance and guidance to ORHS and the nonprofit hospital industry on its billing and collection practices for uninsured patients, including publications such as “Seven Strategies to Improve Your Bottom Line”. In these publications, the AHA encourages ORHS and its other nonprofit hospital members to inflate its chargemaster prices, which only ORHS’ uninsured patients are charged. These inflated chargemaster prices have the intended effect of increasing ORHS’ outlier payment reimbursements under the Disproportionate Share Hospital (DSH) and Medicare reimbursement programs.

22. On December 17, 2003, the AHA sent out a “white paper” entitled “Federal Regulations Hamper Hospitals’ Efforts to Assist Patients of Limited Means” to ORHS and its member nonprofit hospitals, which falsely advised such hospitals that the Medicare laws and regulations prevented them from offering discounts to uninsured patients and required them to aggressively collect medical debt from the uninsured through collection lawsuits, liens, and garnishments.

23. The AHA actively conceals from, and misrepresents to, the government and regulatory agencies the amount of charity care provided by ORHS and its nonprofit hospitals to the uninsured. According to a June 21, 2004, article in Modern Healthcare entitled “Well Kept Secret”, “the AHA collects charity care data [from its members] in its annual hospital survey but does not report the total. Instead, it reports uncompensated care which includes bad debt as well as charity care.”

24. The AHA also falsely justifies to the public and governmental entities the reasoning for the outrageous billing and collection practices employed by ORHS and its nonprofit hospital members. In a December 16, 2003, letter to the United States Department of Health and Human Services Secretary Tommy Thompson, the AHA, while admitting that ORHS and its nonprofit hospital members charge its uninsured patients the full price for medical care, falsely represented to the Secretary that ORHS and its member nonprofit hospitals were required by the federal Medicare regulations to charge and aggressively collect such grossly inflated medical expenses.

25. On February 19, 2004, Secretary Thompson, as the ultimate governmental authority on the applicable Medicare regulations, exposed the falsity of the AHA's prior advice and representations, stating that the Medicare regulations have never required nonprofit hospitals to charge its uninsured patients the highest price for medical care nor prevented such hospitals from offering discounts to its uninsured patients. Moreover, on June 24, 2004, in testimony before the House of Representatives Energy and Commerce Subcommittee on Oversight and Investigations, the Director of the Center for Medicare and Medicaid Services testified that Medicare billing requirements did not prevent discounting medical care to uninsured patients and did not require aggressive collection efforts toward the uninsured. Similar testimony was provided by the Chief Counsel of the Office of Inspector General of the Department of Health and Human Services, who testified that the federal regulations were clear and that there was no justification for interpreting such regulations as preventing discounts to the uninsured.

V. PLAINTIFFS

GEORGE R. KABELLER

26. Plaintiff George R. Kabeller is, and was at all times relevant hereto, a resident citizen

of Orlando, Florida who resides at 9502 Montello Drive, Orlando, Florida. Plaintiff Kabeller is fifty-seven (57) years old and a veteran of the Vietnam war.

27. On or about June 6, 2002 Plaintiff Kabeller sought emergency medical treatment at Orlando Regional Medical Center in Orlando, Florida after suffering a broken leg. Mr. Kabeller was admitted and hospitalized for two days. Plaintiff Kabeller was uninsured at the time of his hospitalization at Orlando Regional Medical Center and was charged approximately \$53,000 for the medical care and treatment he received during his two day stay at Orlando Regional Medical Center.

28. Instead of rendering charity care to Plaintiff Kabeller, Defendant ORHS charged Plaintiff Kabeller a rate for his medical care and treatment that far exceeded the actual cost of providing the care and treatment. The amount charged Plaintiff Kabeller also far exceeded the amount that ORHS would charge insurance companies, Medicare or Medicaid for the same medical care and treatment.

29. ORHS' refusal to grant Plaintiff Kabeller charitable medical care, and policy of charging uninsured amounts far greater than that of insureds, has left Plaintiff Kabeller in a tenuous and uncertain financial position.

PEDRO GONZALEZ

30. Plaintiff Pedro Gonzalez, is, and was at all times relevant hereto, a resident citizen of Orlando Florida who resides at 32 Arca Drive, Orlando, Florida.

31. On or about August 3, 2003, Plaintiff Gonzalez sought emergency medical treatment at Orlando Regional Medical Center in Orlando, Florida after suffering from respiratory difficulties. Plaintiff Gonzalez was hospitalized for one night and was released the following day. Plaintiff

Gonzalez was uninsured at the time of his hospitalization and was charged \$7395.50 for this single night stay at Orlando Regional.

32. Instead of rendering charity care to Plaintiff Gonzalez, Defendant ORHS charged Mr. Gonzalez a rate for his medical care and treatment that far exceeded the actual cost of providing the care and treatment. The amount charged Plaintiff Gonzalez also far exceeded the amount that ORHS would charge insurance companies, Medicare or Medicaid for the same medical care and treatment.

33. ORHS' refusal to grant Plaintiff Gonzalez charitable medical care, and policy of charging uninsured amounts far greater than that of insureds, has left Plaintiff Gonzalez in a tenuous and uncertain financial position.

ALEXANDER KINGHORN

34. Plaintiff Alexander Kinghorn is, and was at all times relevant hereto, a resident citizen of Miami, Florida who resides at 1455 SW 57th Street, Miami, Florida.

35. On or about April 22, 2000 Plaintiff Kinghorn sought emergency medical treatment at Orlando Regional Medical Center in Orlando, Florida after sustaining severe burns on his arms, hand, and abdomen in a small explosion. Plaintiff Kinghorn was admitted and was hospitalized at Orlando Regional Medical Center for approximately two weeks. Plaintiff Kinghorn was uninsured at the time of his admission to Orlando Regional Medical Center. Mr. Kinghorn was charged \$59,023 for his medical care and treatment during this approximately two week stay at Orlando Regional Medical Center.

36. Instead of rendering charity care to Plaintiff Kinghorn, Defendant ORHS charged

Plaintiff Kinghorn a rate for his medical care and treatment that far exceeded the actual cost of providing the care and treatment. The amount charged Plaintiff Kinghorn also far exceeded the amount that ORHS would charge insurance companies, Medicare or Medicaid for the same medical care and treatment.

37. ORHS' refusal to grant Plaintiff Kinghorn charitable medical care, and policy of charging uninsured amounts far greater than that of insureds, has left Plaintiff Kinghorn in a difficult financial position.

VI.
CLASS ACTION ALLEGATIONS

38. Plaintiffs bring this class pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3) on behalf of a Class consisting of all persons who received any form of healthcare treatment at any Orlando Regional Healthcare System hospital from July 21, 1994 through the date of commencement of class notice, and who were uninsured at the time of treatment.

39. Plaintiffs George R. Kabeller, Pedro Gonzalez and Alexander Kinghorn are all members of the Class they seek to represent.

40. The Class consists of thousands of individuals and therefore is so numerous that joinder is impracticable.

41. Plaintiffs' claims are typical of the claims of the Class because they and all of the Class sustained damages as a result of Defendant ORHS' unfair and discriminatory charging and/or collection practices seeking the full undiscounted cost of medical care; and Defendant AHA's aiding and abetting of these practices.

42. There are numerous questions of law and fact common to the Class which predominate over any questions affecting only individual class members, including:

- (a) whether Defendant ORHS entered into express and/or implied Agreements with the United States Government and the State of Florida that in return for substantial tax exemptions, it would: operate exclusively for charitable purposes; provide emergency room medical care to the Plaintiffs and the Class without regard to their ability to pay for such medical care; provide mutually affordable medical care to the Plaintiffs and the Class; and not to seek to collect outstanding medical debt from the Plaintiffs and the Class through aggressive, abusive, and humiliating collection practices;
- (b) whether Defendant ORHS breached said Agreements with the U.S. Government, and/or State of Florida by: failing to operate exclusively for charitable purposes; failing to provide emergency room medical care to the Plaintiffs and the Class without regard to their ability to pay for such medical care; failing to provide mutually affordable medical care to the Plaintiffs and the Class; and by seeking to collect outstanding medical debt from the Plaintiffs and the Class through aggressive, abusive, and humiliating collection practices;
- (c) whether the Plaintiffs and the Class are express and/or implied intended third party beneficiaries to said Agreements between Defendant ORHS and the United States Government, and the State of Florida;

- (d) whether Defendant ORHS charged the Plaintiffs and the Class the full undiscounted cost of medical care in violation of their charitable, nonprofit, tax exempt status;
- (e) whether Defendant ORHS charged the Plaintiffs and the Class higher amounts for medical care than its insured patients in violation of its charitable, nonprofit, tax exempt status;
- (f) whether Defendant ORHS profited by charging the Plaintiffs and the Class the highest rates for medical care;
- (g) whether Defendant ORHS charged the Plaintiffs and the Class unreasonable charges for medical care;
- (h) whether Defendant ORHS conditioned emergency room medical screening and/or treatment to the Plaintiffs and the Class on their ability to pay or financial guarantees to pay for such medical care in violation of 26 U.S.C. §501(c)(3) and 42 U.S.C. §1395 dd;
- (i) whether Defendant ORHS should have utilized its sizable financial resources to provide a greater amount of mutually affordable medical care to the Plaintiffs and the Class pursuant to its charitable, nonprofit, tax exempt status;
- (j) whether Defendant ORHS has utilized aggressive, unfair, abusive, and harassing collection practices, lawsuits, liens, and garnishments to collect medical payments from the Plaintiffs and the Class in violation of its charitable, nonprofit, tax exempt status;

- (k) whether Defendant ORHS violated the anti-inurement provision of 26 U.S.C. §501(c)(3) by providing substantial discounts in medical care to its Board of Directors; the Board of Directors of the hospitals comprising the ORHS system; and entities connected to its Board of Directors;
- (l) whether Defendant ORHS failed to operate exclusively for charitable purposes by allowing noncharitable for-profit entities to derive a profit from its use of its' tax-exempt hospitals in violation of 26 U.S.C. §501(c)(3) and Fla. Stat. §§196.192, 196.197, 199.183 and Fla. Const. Art. VII, § 3;
- (m) whether Defendant ORHS breached its duty of good faith and fair dealing to the Plaintiffs and the Class;
- (n) whether a charitable trust was created for the benefit of the Plaintiffs and the Class;
- (o) whether the Defendant ORHS' actions as alleged in the Complaint violated the Florida Deceptive and Unfair Trade Practices Act;
- (p) whether Defendant ORHS has been unjustly enriched at the Plaintiffs' and the Class' expense;
- (q) whether Defendant AHA conspired with Defendant ORHS to breach its contracts with the United States Government and State of Florida;
- (r) whether Defendant AHA aided and abetted Defendant ORHS in breaching its contracts with the United States Government and State of Florida;
- (s) whether Defendant ORHS should be enjoined from continuing its unfair, discriminatory, and abusive conduct; and

(t) whether Defendants are liable to the Plaintiffs and the Class in this action, as alleged in the Complaint.

43. All common questions are able to be resolved through the same factual occurrences as specifically and/or generally alleged herein.

44. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class. Plaintiffs have no claims antagonistic to those of the Class. Plaintiffs have retained competent and experienced counsel in complex class actions, and mass tort and products liability litigation. Counsel is committed to the vigorous prosecution of this action.

45. The prosecution of separate actions by the Plaintiffs and individual members of the Class against the Defendant would create a risk of inconsistent or varying adjudications on the common issues of law and fact related to this action.

46. A Class Action is superior to all other available methods for the fair and efficient adjudication of this controversy.

47. The expense and burden of litigation would substantially impair the ability of the Class Members to pursue individual cases in order to initiate their rights. In the absence of a class action, the Defendants will retain the benefits of their wrongdoing.

48. Class Certification pursuant to Rule 23(b)(3) is appropriate because the common issues of fact and law alleged herein are common to the Class and predominate over any questions affecting only individual members, thereby rendering the class action superior to all other available methods for the fair and efficient adjudication of this controversy.

49. Class Certification is also appropriate pursuant to Rule 23(b)(2) because, as set forth in the Complaint, Defendants ORHS and AHA have acted and/or refused to act on grounds generally

applicable to the Plaintiffs and the Class, thereby warranting appropriate injunctive and/or declaratory relief.

VII.
CAUSES OF ACTION

COUNT ONE
THIRD PARTY BREACH OF CONTRACT

50. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in paragraphs 1 through 49 of the Complaint.

51. Defendant ORHS, as a purported charitable entity under 26 U.S.C. §501(c)(3), entered into an express and/or implied Agreement with the United States Government pursuant to §501(c)(3) that in return for a substantial federal income tax exemption valued in the millions of dollars it would: operate exclusively for charitable purposes; provide emergency room medical care to the Plaintiffs and the Class without regard to their ability to pay for such medical care; provide mutually affordable medical care to the Plaintiffs and the Class; not pursue outstanding medical debt from the Plaintiffs and the Class by engaging in aggressive, abusive, and humiliating collection practices; and not provide financial inurement to private individuals or entities.

52. Defendant ORHS, as a purported institution of public charity under Fla. Stat. §§196.192, 196.197, 199.183 and Fla. Const. Art. VII, § 3, also entered into express and/or implied Agreements with the State of Florida, pursuant to Fla. Stat. §§196.192, 196.197, 199.183 and Fla. Const. Art. VII, § 3, that in return for substantial state income, property, and sales tax exemptions

valued in the millions of dollars, it would: operate actually and exclusively for charitable purposes; provide emergency room medical care to the Plaintiffs and the Class without regard to their ability to pay for such medical care; provide mutually affordable medical care to the Plaintiffs and the Class; not to pursue outstanding medical debt from the Plaintiffs and the Class by engaging in aggressive, abusive, and humiliating collection practices; and not provide financial inurement to private individuals and entities.

53. The Plaintiffs and the Class are the express and/or implied intended third party beneficiaries of ORHS' Agreements with the United States Government and the State of Florida.

54. ORHS breached the above-mentioned Agreements with the United States Government and the State of Florida by: failing to provide emergency room medical care to the Plaintiffs and the Class without regard to their ability to pay for such medical care; charging the Plaintiffs and the Class the highest and full undiscounted cost of medical care; charging the Plaintiffs and the Class significantly more than its insured patients for the same medical services; failing to use its net assets and revenues in excess of a billion dollars to provide mutually affordable medical care to the Plaintiffs and the Class; utilizing aggressive, abusive and humiliating collection practices such as lawsuits, liens, and garnishments to collect such inflated and unreasonable medical debt from the Plaintiffs and the Class; allowing noncharitable for-profit entities to derive a profit from use of its tax-exempt hospitals; and upon information and belief, providing substantial discounts off the gross charges to its Board of Directors, to the Board of Directors of the hospitals comprising the ORHS system, and to entities connected to its Board of Directors. As a result of such conduct, the Plaintiffs and the Class have not received the benefit of ORHS' agreements with the United States

Government and the State of Florida. Such conduct is also contrary to the ORHS' purported charitable purpose and its nonprofit status.

55. The aforementioned breaches of contract have proximately caused the Plaintiffs and the Class economic injury and other damages.

COUNT TWO
BREACH OF CONTRACT

56. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in paragraphs 1 through 55 of the Complaint.

57. Alternatively, upon admission, the Plaintiffs and the Class entered into express form contracts with Defendant ORHS whereby the Plaintiffs and the Class were required to agree to pay unspecified and undocumented charges for medical care set by ORHS in its sole discretion. Imputed in these contracts is the express and/or implied contractual obligation by ORHS that it would charge the Plaintiffs and the Class no more than a fair and reasonable charge for such medical care.

58. Similarly, by accepting and admitting the Plaintiffs and the Class into its hospitals for medical care, Defendant ORHS undertook an express and/or implied contractual obligation to charge the Plaintiffs and the Class no more than a fair and reasonable charge for such medical care.

59. Defendant ORHS breached its contractual obligations under these form contracts by charging the Plaintiffs and the Class the highest and full undiscounted cost for medical care. These charges are unfair, unreasonable, and bear no relation to the actual cost of providing such services.

60. The aforementioned breaches of contract have proximately caused the Plaintiffs and the Class economic injury and other damages.

COUNT THREE

BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

61. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in paragraphs 1 through 60 of the Complaint.

62. Defendant ORHS' conduct as alleged above, also constitutes a breach of its duty of good faith and fair dealing.

63. The Plaintiffs and the Class are express and/or implied intended third party beneficiaries of Agreements between the United States Government and the State of Florida, wherein ORHS agreed to provide mutually affordable medical care to the Plaintiffs and the Class in return for substantial federal, state, and local tax exemptions.

64. Alternatively, the Plaintiffs and the Class entered into an express and/or implied contractual relationship with Defendant ORHS wherein each Plaintiff and Class member was admitted to ORHS' hospitals for the purpose of receiving medical care.

65. Defendant ORHS breached its duty of good faith and fair dealing to the Plaintiffs and the Class by: failing to provide emergency room medical care to the Plaintiffs and the Class without regard to their ability to pay for such care; charging the Plaintiffs and the Class the highest and full undiscounted cost of medical care; charging the Plaintiffs and the Class a higher amount for medical services than it charged its insured patients for the same services; charging the Plaintiffs and the Class unreasonable charges for medical care; utilizing aggressive, abusive, and harassing collection practices such as collection lawsuits, liens, and garnishments to collect such outstanding grossly inflated medical debt from the Plaintiffs and the Class; allowing noncharitable for-profit entities to derive a profit from use of its tax-exempt hospitals; and upon information and belief, providing

substantial discounts off the gross charges to its Board of Directors, to the Board of Directors of the hospitals comprising the ORHS system, and entities connected to the Board of Directors.

66. Such unfair and bad faith conduct by Defendant ORHS proximately caused economic injury and other damages to the Plaintiffs and the Class.

COUNT FOUR
BREACH OF CHARITABLE TRUST

67. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in paragraphs 1 through 66 of the Complaint.

68. By accepting federal, state and local tax exemptions under 26 U.S.C. §501(c)(3) and Fla. Stat. §§196.192, 196.197, 199.183 and Fla. Const. Art. VII, § 3, Defendant ORHS created and entered into a public charitable trust to provide mutually affordable medical care to its' uninsured patients.

69. The Plaintiffs and the Class are the intended beneficiaries of this charitable trust created by virtue of ORHS' acceptance of federal, state and local tax exemptions.

70. ORHS has breached its' charitable trust obligations to the Plaintiffs and the Class by: failing to provide emergency room medical care to the Plaintiffs and the Class without regard to their ability to pay for such medical care; charging the Plaintiffs and the Class the highest and full undiscounted cost of medical care; charging the Plaintiffs and the Class significantly more than its insured patients for the same medical services; failing to use its net assets and revenues in excess of a billion dollars to provide mutually affordable medical care to the Plaintiff and the Class; utilizing aggressive, abusive and humiliating collection practices such as lawsuits, liens, and garnishments

to collect such inflated and unreasonable medical debt from the Plaintiff and the Class; allowing noncharitable for-profit entities to derive a profit from use of its tax-exempt hospitals; and upon information and belief, providing substantial discounts off the gross charges to its Board of Directors, to the Board of Directors of the hospitals comprising the ORHS system, and entities connected to its Board of Directors. As a result of such conduct, the Plaintiff and the Class have not received the benefit of the charitable trust created for their benefit.

71. The aforementioned breaches of charitable trust have caused the Plaintiff and the Class economic injury and other damages.

COUNT FIVE

VIOLATIONS OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

72. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in paragraphs 1 through 71 of the Complaint.

73. The Florida Deceptive and Unfair Trade Practices Act, § 501.201 et seq., was enacted to prohibit and protect Florida citizens from deceptive, fraudulent and unfair conduct.

74. As alleged above, ORHS' conduct in charging the Plaintiffs and the Class the highest and full uncompensated cost for medical care and charging the Plaintiffs and the Class a higher amount than its insured patients for the same medical services, despite its charitable, nonprofit, tax exempt status, is in violation of the Florida Deceptive and Unfair Trade Practices Act because it is unfair, discriminatory, unconscionable, unethical, immoral, and oppressive. Such conduct is against public policy and has caused substantial economic injury to the Plaintiffs and the Class.

75. Moreover, as alleged above, ORHS' aggressive, abusive, and harassing efforts to collect such inflated, undiscounted and uncompensated medical debt from the Plaintiffs and the Class through collection lawsuits, liens and garnishments, despite its charitable, nonprofit, tax

exempt status, is unfair, discriminatory, unethical, immoral, and oppressive. Such conduct is also against public policy and has caused substantial economic injury to the Plaintiffs and the Class, including but not limited to bankruptcy and/or financial ruin.

76. ORHS has knowingly induced Plaintiffs and the Class to use its facilities under the belief that ORHS would operate its facilities as charity providers of health care for the uninsured. In doing so, ORHS has knowingly made false representations in order to attract consumers.

77. These false representations have been made in the course of ORHS' business.

78. These false representations, as alleged above, have significantly impacted the public as both actual and potential consumers of ORHS' services.

79. These false representations have caused the Plaintiffs and the Class to suffer injuries in fact to a legally protected interest resulting in economic injuries and other damages.

COUNT SIX

VIOLATIONS OF THE EMERGENCY MEDICAL TREATMENT AND ACTIVE LABOR ACT

80. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in paragraphs 1 through 79 of the Complaint.

81. Under the Emergency Medical Treatment and Active Labor Act ("EMTALA"), 42 U.S.C. §1395 dd, a "participating hospital" must provide a medical screening examination to any individual that comes into its emergency room for an "emergency medical condition" in order to determine whether such emergency medical condition exists. If such an "emergency medical condition" does in fact exist, the "participating hospital" must provide sufficient medical examination and/or treatment necessary to stabilize the condition. The express intent of the EMTALA is to prohibit hospitals from denying or delaying emergency medical treatment to patients without medical insurance because of their uninsured status.

82. All hospitals comprising the Orlando Regional Healthcare System, including Orlando Regional Medical Center, are “participating hospitals” as defined in 42 U.S.C. §1395 cc and §1395 dd.

83. Upon information and belief, before ORHS would provide emergency medical screening and/or treatment for “emergency medical conditions” to the Plaintiffs and the Class, it first analyzed their ability to pay for such medical care and required the Plaintiffs and the Class to sign form contracts agreeing to pay ORHS in full for unspecified and undiscounted medical charges. ORHS would not provide emergency medical screening and/or treatment to the Plaintiffs and the Class unless they were able to pay for such medical care or until they agreed to sign a form contract guaranteeing payment in full for some medical care. By conditioning medical screening and/or treatment for “emergency medical conditions” on the Plaintiffs’ and the Class’ ability to pay and financial guarantees, and refusing to provide emergency medical screening and/or treatment until such guarantees were given, Defendant ORHS violated the EMTALA, 42 U.S.C. §1395 dd. Such conduct in failing to provide emergency room medical care to the Plaintiffs and the Class without regard to their ability to pay for such medical care is also in violation of 26 U.S.C. §501(c)(3).

84. Such violations of 42 U.S.C. §1395 dd have proximately caused the Plaintiffs and the Class economic injury and other damages.

COUNT SEVEN
UNJUST ENRICHMENT/CONSTRUCTIVE TRUST

85. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in paragraphs 1 through 84 of the Complaint.

86. Defendant ORHS has been unjustly enriched at the Plaintiffs’ and the Class’ expense. As alleged above, Defendant ORHS has failed to provide mutually affordable medical care to the

Plaintiffs and the Class despite receiving millions of dollars in federal, state, and local tax exemptions for such purpose. Moreover, contrary to their charitable, nonprofit, tax exempt status, ORHS has failed to utilize its substantial net assets and revenues, valued in excess of a billion dollars, to provide mutually affordable medical care to the Plaintiffs and the Class. ORHS has also realized profits in the millions of dollars by charging the Plaintiffs and the Class the highest and full undiscounted cost for medical care and by charging the Plaintiffs and the Class a higher amount for medical care than its insured patients.

87. The Plaintiffs and the Class have suffered severe economic injury and other damages as a proximate consequence of ORHS' unjust enrichment.

88. As a result of Defendant ORHS' breach of contract along with their wrongful, unfair, discriminatory, abusive, and noncharitable conduct, ORHS is in possession of tax savings, profits and other assets that in good conscience and equity it should not be entitled to retain. The Plaintiffs and the Class are therefore entitled to all damages resulting from ORHS' unjust enrichment, including but not limited to, the imposition of a constructive trust in the amount of ORHS' federal, state and local tax exemption savings. The Plaintiffs and the Class are also entitled to the imposition of a constructive trust on all profits ORHS' wrongfully obtained by charging the Plaintiffs and the Class the highest and full undiscounted cost of medical care. The Plaintiffs and the Class are further entitled to the imposition of a constructive trust on the difference between the amount Defendant has charged the Plaintiffs and the Class and the amount it has charged its insured patients. Lastly, the Plaintiffs and the Class are, therefore, entitled to the imposition of a constructive trust on ORHS' net assets and revenues in an amount sufficient to provide to the Plaintiffs and the Class mutually affordable medical care pursuant to its charitable, nonprofit, tax exempt status.

COUNT EIGHT
CIVIL CONSPIRACY/CONCERT OF ACTION

89. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in paragraphs 1 through 88 of the Complaint.

90. Defendant AHA advised ORHS and its nonprofit hospital members on its billing and collection practices concerning the uninsured through various internal memos and/or “white papers” for the purpose of increasing ORHS profits and government reimbursements. In these internal memos, such as the December 17, 2003, memo entitled “Federal Regulations Hamper Hospitals Efforts to Assist Patients of Limited Means,” the AHA advised ORHS and its member nonprofit hospitals that they were prevented from providing discounts to the Plaintiffs and the Class and were required to subject Plaintiffs and the Class to abusive collection practices. The AHA, through these internal memos, conspired and acted in concert with ORHS to charge the Plaintiffs and the Class the highest undiscounted cost for medical care and aggressively collect such inflated medical debt through abusive lawsuits, liens and garnishments.

91. Moreover, the AHA actively conspired and acted in concert with ORHS to wrongfully retain its tax exempt status and breach ORHS’ contracts with the United States Government, State of Florida, and other local governmental bodies, the Plaintiffs and the Class by: advising ORHS that it charge and collect undiscounted rates for medical care from the Plaintiffs and the Class; falsely representing to Secretary Thompson that ORHS was required to charge and collect undiscounted rates for medical care from the Plaintiffs and the Class; and concealing and misrepresenting the true amount of charity care ORHS provided to the Plaintiffs and the Class.

92. Through such acts, the AHA also conspired and acted in concert with ORHS to violate the Florida Deceptive and Unfair Trade Practices Act and to breach ORHS' duty of good faith and fair dealing to the Plaintiffs and the Class.

93. Such advice, assistance, false justification, concealments and misrepresentations have allowed and enabled ORHS to: fail to provide emergency room medical care to the Plaintiffs and the Class without regard for their ability to pay for such medical care; charge the Plaintiffs and the Class the highest and full undiscounted cost of medical care; fail to provide mutually affordable medical care to the Plaintiff and the Class; charge the Plaintiffs and the Class substantially more than its insured patients for the same medical services; fail to use its net assets and reserves in the hundreds of millions of dollars to provide mutually affordable health care to the Plaintiffs and the Class; and engage in aggressive, abusive, and harassing collection practices such as lawsuits, liens, and garnishments to collect such inflated and unreasonable medical debt from the Plaintiffs and the Class.

94. Such acts of conspiracy and concert in action by the AHA have proximately caused ORHS to be unjustly enriched at the Plaintiffs' and Class' expense and have also proximately caused the Plaintiffs and the Class economic injury and other damages.

COUNT NINE
AIDING AND ABETTING

95. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in paragraphs 1 through 94 of the Complaint.

96. Defendant AHA, through its internal memos and other advisory assistance, aided and abetted ORHS in charging the Plaintiffs and the Class the full undiscounted cost for medical care

and in seeking to collect such grossly inflated medical debt from the Plaintiffs and the Class through abusive collection lawsuits, liens and garnishments.

97. The AHA aided and abetted ORHS' breach of its tax exempt contracts with the United States Government, State of Florida, other local governmental bodies, the Plaintiffs and the Class by advising ORHS that federal regulations prevented it from providing discounts to the Plaintiffs and the Class and required it to aggressively collect such grossly inflated medical debt from the Plaintiffs and the Class through collection lawsuits, liens and garnishments.

98. The AHA also aided and abetted ORHS' breaches of contract by falsely justifying and representing to Secretary Thompson and other government entities that the Medicare regulations prevented ORHS from providing discounts to the Plaintiffs and the Class and required ORHS to aggressively collect such grossly inflated medical debt from the Plaintiffs and the Class through collection lawsuits, liens and garnishments.

99. Defendant AHA further aided and abetted ORHS' breaches of contract by falsely representing and concealing the true cost of charity care provided by ORHS to the Plaintiffs and the Class.

100. Through these acts, the AHA also aided and abetted ORHS' violations of the Florida Deceptive and Unfair Trade Practices Act and ORHS' breach of its duty of good faith and fair dealing toward the Plaintiffs and the Class.

101. Such substantial assistance by the AHA allowed and enabled ORHS to: fail to provide emergency room medical care to the Plaintiffs and the Class without regard for their ability to pay for such medical care; charge the Plaintiffs and the Class the highest and full undiscounted cost of medical care; fail to provide mutually affordable medical care to the Plaintiffs and the Class; charge

the Plaintiffs and the Class substantially more than its insured patients for the same medical services; fail to use its net assets and revenues in the hundreds of millions of dollars to provide mutually affordable health care to the Plaintiffs and the Class; and engage in aggressive, abusive, and harassing collection practices such as lawsuits, liens, and garnishments to collect such inflated and unreasonable medical debt from the Plaintiffs and the Class.

102. Defendant AHA's substantial assistance has proximately caused ORHS to be unjustly enriched at the Plaintiffs' and Class' expense and has also proximately caused the Plaintiffs and the Class economic injury and other damages.

COUNT TEN
INJUNCTIVE/DECLARATORY RELIEF

103. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in paragraphs 1 through 102 of the Complaint.

104. As a result of Defendant ORHS' wrongful, unfair, discriminatory, and unconscionable charging and collection practices, and Defendant AHA's aiding and abetting and conspiratorial practices, Plaintiffs and the Class have suffered and, unless abated, will continue to suffer severe and irreparable harm and injury.

105. Accordingly, Plaintiffs and the Class respectfully request that this Court enter a preliminary and/or permanent injunction, in accordance with FRCP 23(b)(2), ordering Defendant ORHS to cease and desist: charging the Plaintiffs and the Class the highest and full undiscounted cost of medical care; charging the Plaintiffs and the Class a higher amount for medical services than its insured patients for the same services; and utilizing aggressive, abusive, and harassing collection practices such as collection lawsuits, liens, and garnishments to collect outstanding grossly inflated medical debt from the Plaintiffs and the Class.

106. Plaintiffs and the Class also seek a prospective Order from the Court, in accordance with FRCP 26(b)(2), requiring Defendant ORHS: to provide mutually affordable medical care to the Plaintiffs and the Class; to charge the Plaintiffs and the Class no more for medical services than it charges their insured patients, and to cease their attempts to collect outstanding medical debt from the Plaintiffs and the Class until they have complied with a 180-day waiting period and attempted in good faith to settle such outstanding debt with the Plaintiffs and the Class through a graduated payment plan or other means.

VIII. DAMAGES

107. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in paragraphs 1 through 106 of the Complaint.

108. As a direct and proximate result of Defendant ORHS' breach of contract, breach of duty of good faith and fair dealing, violations of EMTALA, conspiracy and unjust enrichment, and Defendant AHA's aiding and abetting and conspiratorial actions, the Plaintiffs and the Class have suffered economic injury and damages.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs requests that upon a trial of this action, judgment will be entered against Defendants ORHS and AHA for:

- 1) all economic, monetary, actual, consequential, and compensatory damages caused by the conduct of Defendants Orlando Regional Healthcare System and AHA;
- 2) a constructive trust to be imposed on: Defendant ORHS' federal, state and local tax exempt savings; ORHS' profits obtained from charging the Plaintiffs and the Class the highest and full undiscounted cost for medical care; and ORHS' net assets and

revenues in an amount sufficient to provide the Plaintiffs and the class mutually affordable medical care; and

3) injunctive and/or declaratory relief.

Respectfully submitted, this the ____ day of July, 2004.

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JURY DEMAND

THE PLAINTIFFS DEMAND TRIAL BY STRUCK JURY ON ALL ISSUES HEREIN.

Of Counsel

PLEASE SERVE DEFENDANTS BY CERTIFIED MAIL AT THE FOLLOWING ADDRESSES:

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