



CLERK OF THE COURT

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11 **KENNETH BARTH, SANDRA LANE, individually and**  
12 **on behalf of all others similarly situated**

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 KENNETH BARTH, SANDRA LANE, )  
16 Individually, and on behalf of all others )  
17 similarly situated, )

18 Plaintiffs, )

19 v )

20 HEART CHECK AMERICA – LAS )  
21 VEGAS LLC, a Nevada Limited Liability )  
22 Company, HEART CHECK AMERICA -- )  
23 SERVICES LLC, a Nevada Limited )  
24 Liability Company, HEART CHECK )  
25 AMERICA INC., a California Corpora- )  
26 tion, CHASE BANK U.S.A. N.A. a )  
27 Delaware Corporation, CONRAD )  
28 ACCEPTANCE CORPORATION, a )  
California Corporation, and DOES 1 )  
through 100, Inclusive, )

Defendants, )

CASE NO : A-11-646233-C  
DEPT : XIX

**SECOND AMENDED  
COMPLAINT FOR DAMAGES  
AND FOR EQUITABLE AND DE-  
CLARATORY RELIEF AND  
DEMAND FOR JURY TRIAL**

1. Breach of Contract
2. Breach of the Covenant of Good Faith and Fair Dealing
3. Deceptive Trade Practices
4. Conspiracy
5. Equitable Estoppel
6. Rescission
7. Unjust Enrichment/Restitution
8. Declaratory Relief
9. Injunctive Relief

[Lodged concurrently with Plaintiff's Application for Leave to File Second Amended Complaint]



1           2.       Defendants HEART CHECK AMERICA – LAS VEGAS LLC, (“HCALV”),  
2 HEART CHECK AMERICA – SERVICES LLC, (“HCAS”) and HEART CHECK  
3 AMERICA INC., (“HCA”) (unless otherwise individually identified herein are collectively  
4 hereinafter referred to as “HCA Defendants”), own and/or operate, or “ostensibly” own  
5 and operate a medical imaging business located in the City of Las Vegas, County of  
6 Clark, State of Nevada. According to the HCA Defendants’ website, they are comprised  
7 of a privately-held group of medical imaging centers specializing in the field known as  
8 “preventive imaging” through early diagnosis of disease. The HCA Defendants do this  
9 by utilizing allegedly “highly validated” Electron Beam Computed Tomography (CT)  
10 Scanner to detect and measure heart disease, lung cancer, colon cancer, and other  
11 cancers throughout the abdomen and pelvis. The HCA Defendants advertise the earlier  
12 these diseases are detected, the greater the range of treatment options and the greater  
13 the likelihood of a successful outcome.  
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16           3.       Within the last six years, the HCA Defendants actually entered into and/or  
17 facilitated the entering of numerous written “long term medical service contracts” with  
18 Nevada consumers, who were also Nevada residents, for the performance of many of the  
19 aforementioned radiological and other medical imaging services. Said contracts being  
20 presented to and entered into with said Nevada consumers within the State of Nevada,  
21 County of Clark. Said radiological (CT) and other radiological medical imaging services  
22 were to be rendered locally within the greater Las Vegas Valley area at the HCA  
23 Defendants’ imaging center. At that time said contracts were entered into with said  
24 Nevada consumers, the HCA Defendants’ imaging center was located on West Sahara  
25 Blvd., in the City of Las Vegas, County of Clark, State of Nevada. Said contracts were  
26 offered to Nevada consumers for a contract term involving successive years, sometimes  
27 as long as ten years, which if the consumer entered into such a contract, the consumer  
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1 would receive a “substantial discount” on said radiological imaging services, as  
2 compared to if the consumer just came in once a year for the same imaging procedures  
3 without a long term contract. Such a discount was an inducement and/or incentive for  
4 the consumer to enter into such long term medical service contracts.

5 4. At all relevant times herein mentioned, all long term medical service  
6 contracts were presented by the HCA Defendants’ employees and/or agents, and were  
7 mostly entered into at the HCA Defendants’ local office in Las Vegas, or alternatively  
8 within the County of Clark, State of Nevada. The HCA Defendants also specifically  
9 advertised and targeted their services locally within the Las Vegas area, and also  
10 conducted numerous local “informational” seminars within Clark County, which  
11 specifically targeted Nevada consumers to provide services to said consumers who  
12 primarily who resided within the County of Clark, State of Nevada. Given the nature of  
13 the contracts for personal medical services to be rendered primarily to residents  
14 residing in Clark County, and the way in which the HCA Defendants specifically targeted  
15 the marketing of their services as “local,” and of which said medical services were to be  
16 actually preformed “locally” within the County of Clark, State of Nevada, more than two-  
17 thirds (66%) of the putative class who entered into the long term service medical  
18 contracts, as herein alleged, are residents of the State of Nevada. In fact, based on the  
19 “local” nature of the personal services involved, it is highly likely that over 90% of the  
20 putative class are residents of the State of Nevada, mostly residing within the County of  
21 Clark.  
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25 5. At all relevant times herein mentioned, Defendant CONRAD  
26 ACCEPTANCE CORPORATION (“CAC”) is a corporation organized and existing under  
27 the laws of the state of California, and it is unknown if said Defendant is authorized to  
28 do business within the State of Nevada. Based on information and belief, Defendant

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1 CAC was assigned the right from the HCA Defendants to bill and collect the hereinafter  
2 alleged “annual fee” under Defendant HCA or HCALV’s long term medical services  
3 contracts.

4 6. At all relevant times, Plaintiffs KENNETH BARTH (“KB”) and SANDRA  
5 LANE (“SL”) were residents of the State of Nevada, County of Clark, and were Nevada  
6 consumers/residents who entered into one of the aforementioned long term medical  
7 service contracts with Defendants HCA and HCALV for a period of ten years, and who  
8 had the purchase said long term medical service contract through either Defendant  
9 CHASE BANK U.S.A. N.A. or CAC.  
10

11 7. At all relevant times, Defendant HCA is a corporation, organized and  
12 existing under the laws of the State of California, and was not authorized to conduct any  
13 business whatsoever in the State of Nevada, including entering into as well as the  
14 performance of long term service contracts for personal medical services within the state  
15 of Nevada with Nevada consumers , but in fact, as hereinafter alleged, was ostensibly  
16 and/or surreptitiously doing business in the State of Nevada via Defendants HCALV and  
17 HCAS.  
18

19 8. Based on information and belief, Defendant HCALV is a Nevada Limited  
20 Liability Company, organized and existing under the laws of the state of Nevada and was  
21 registered with the Nevada Secretary of State to do business in the State of Nevada.  
22 Furthermore, based on information and belief, HCALV was the entity by which  
23 Defendant HAC was ostensibly and/or surreptitiously doing business through within the  
24 State of Nevada, (who was not licensed to do any business whatsoever within the State  
25 of Nevada). At all relevant times herein mentioned, HCALV knew Defendant HCA was  
26 not authorized to conduct any business within the state of Nevada. Furthermore, based  
27 on information and belief, HCALV was the entity who owned and/or operated the  
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1   aforementioned imaging center located in Las Vegas Nevada, and who was also  
2   responsible signing up the aforementioned Nevada consumers for herein mentioned  
3   long term medical service contracts, as well as performing the aforementioned  
4   radiological imaging services under said contracts.

5           9. Furthermore, based on information and belief, Defendant HCAS is a Nevada  
6   Limited Liability Company, organized and existing under the laws of the state of  
7   Nevada, was registered with the Nevada Secretary of State to do business in the State of  
8   Nevada. Furthermore, based on information and belief, HCAS was the entity by which  
9   Defendant HAC was ostensibly and/or surreptitiously doing business through within the  
10   State of Nevada, (who was not licensed to do any business whatsoever within the State  
11   of Nevada). At all relevant times herein mentioned, HCAS knew Defendant HCA was  
12   not authorized to conduct any business within the state of Nevada. Furthermore, based  
13   on information and belief, HCAS was the entity who owned and/or operated the  
14   aforementioned imaging center located in Las Vegas, Nevada, and who was also  
15   responsible signing up the aforementioned Nevada consumers for herein mentioned  
16   long term medical service contracts, as well as performing the aforementioned  
17   radiological imaging services under said contracts.

18           10. At all relevant times herein mentioned, Defendants HCALV and HCAS  
19   acted as, and/or were HCA's agent in Nevada, either ostensibly, expressly or impliedly,  
20   with respect to the "preventative" radiological imaging services being sold and  
21   performed under the aforementioned long term medical service contracts.  
22   Nevertheless, Defendants HCALV and HCAS knew Defendant HCA was not authorized  
23   or licensed to conduct any business whatsoever within the State of Nevada, was not  
24   registered with the Nevada Secretary of State to conduct business, was not licensed with  
25   the Nevada Department of Taxation, the Nevada Department of Health and Human  
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1 Services, the City of Las Vegas, or the County of Clark, but despite such knowledge,  
2 actively assisted and/or facilitated HCA to surreptitiously conduct illegal and/or  
3 wrongful business in the state of Nevada with Nevada consumer by actively soliciting,  
4 presenting, advertising, pitching and signing up Nevada consumers to enter into one of  
5 Defendant HCA's long term service medical contracts; contracts that were unlawful,  
6 illegal and/or deceptive, as hereinafter alleged. <sup>1</sup>

8 11. At all relative times herein mentioned, Defendant CHASE BANK USA  
9 N.A., ("CB") is a corporation organized and existing under the laws of the state of  
10 Delaware and is licensed to do business in the state of Nevada.

11 12. At all relevant times herein mentioned, Defendants HCA and HCALV,  
12 entered into numerous, "long term medical service contracts" within in the state of  
13 Nevada with Nevada residents. Said HCA and HCALV contracts required the consumer  
14 to pay an "annual fee" of \$ 199.00 or \$ 149.00 for the duration of the contract term, as  
15 well as payment of an initial one time "enrollment fee" of \$ 199.00 or \$ 249.00. Based  
16 on information and belief, once the consumer was approved to finance the purchase of  
17 one of Defendant HCA's and/or HCALV's contracts, (after defendants HCALV and  
18 HCAS facilitated the application and acquisition of said financed on behalf of the  
19 consumer), the consumer would then also be legally responsible and obligated to pay the  
20 annual fee of \$ 199.00 or \$ 149.00 to Defendant HCA and/or HCALV.

21 13. At all relevant times herein mentioned, Defendants HCA and HCALV had  
22 a business relationship with Defendants CB and CAC, by which CB and CAC agreed to  
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25 <sup>1</sup> It is still unknown which of the HCA defendants was actually on the lease for the building where the  
26 imaging equipment was located, or from which HCA Defendant the persons who were responsible for  
27 signing up Nevada consumers into these long term medical service contracts were actually "employed"  
28 with, or which HCA defendant actually owned and/or leased, operated and/or supervised the imaging  
center and the equipment located within said office space, or which HCA defendant paid the rent under  
said lease and/or the operating expenses at said location, etc... all of which will be established via  
discovery.

1 finance the purchase of Defendant HCA and HCALV's long term medical services  
2 contracts entered into with Nevada consumers, (after CB or CAC approved the  
3 consumer for financing under its credit worthiness guidelines). *ChaseHealthAdvance* is  
4 a revolving consumer credit account from CB, which only can be used to pay for and/or  
5 finance health services from approved medical providers. If the consumer did not want  
6 to pay cash, and wanted to finance the purchase of their contract, or otherwise did not  
7 have the cash funds to purchase one of HCA or HCALV's long term medical service  
8 contracts, Defendants HCA and/or HCALV offered the Plaintiffs, and the putative class  
9 as herein defined, financing through CB and CAC, to finance the purchase of one of the  
10 aforementioned "long term" service contracts. The Plaintiffs, as well as the putative  
11 class, if approved by CB or CAC, would then become obligated to make monthly  
12 payments directly to CB under its revolving credit account, or to CAC under an  
13 installment sale contract which was subsequently assigned to CAC, until the consumer's  
14 balance was paid off with respect to the contract the consumer entered into with HCA  
15 and/or HCALV.

18 14. Additionally, based on information and belief, employees of HCA, HCALV  
19 and/or HCAS were the persons responsible for presenting Defendant HCA and HCALV's  
20 contracts to the Plaintiffs and the putative class, on behalf of said Defendants, and were  
21 the parties responsible for taking all necessary information from the Nevada consumer  
22 at their imaging facility here in Las Vegas. Said Defendants would then, on behalf of the  
23 consumer, process the Nevada consumer's request for the extension of credit with CB  
24 and/or CAC to apply for credit with CB and/or CAC, and to see if said consumer  
25 qualified to finance one of HCA or HCALV's long term medical service contracts.  
26 Approval was usually instantaneous, and all paperwork was prepared, signed and  
27

1 delivered to the consumer by HCA, HCALV and/or HCAS's employees. Once approval  
2 was made, the HCA Defendants knew Defendants HCA and/or HCALV would then be  
3 paid by CB and/or CAC, and then HCA, HCALV and/or HCAS would then sign the  
4 consumer up under one of Defendant HCA and/or HCALV's "long term medical service  
5 contracts," as hereinafter alleged. As herein alleged, Defendant HCA could not legally  
6 sign up Nevada consumers within the state of Nevada, either directly or indirectly, as  
7 Defendant HCA was not authorized to conduct any business whatsoever within the State  
8 of Nevada, including, but not limited to, entering into and/or performing one of its long  
9 term medical service contracts within the State of Nevada with a Nevada consumer.

11 15. At all relevant times, CB's terms and conditions under its standardized  
12 contract (revolving consumer credit account) with Plaintiff KB, as well as the putative  
13 class as herein defined, had the following express contractual term within all of its  
14 consumer credit contracts at issue in this action:

16 NOTICE : ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS  
17 SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR  
18 COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES  
OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF.  
RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED  
AMOUNTS PAID BY THE DEBTOR HEREUNDER.

19 16. By virtue of said expressly agreed to contractual term integrated into the  
20 CB's terms and conditions of its revolving consumer credit account, CB has  
21 contractually agreed to be subject to any and all defenses *and* claims that Plaintiff, and  
22

1 the putative class as herein defined, could assert against Defendant HCA.<sup>2</sup>

2 17. At all relevant times herein mentioned, CAC was a “creditor” as defined in  
3 16 C.F.R. 433.1(c). Furthermore, HCALV’s “retail installment contract, as hereinafter  
4 alleged, that was entered into between the Plaintiff SL and Defendant HCALV, was a  
5 “purchase money loan” as defined under 16 C.F.R. § 433.1(d), and/or was a “consumer  
6 credit contract” as defined under 16 C.F.R. § 433.1(i) involving the “financing” of  
7 services as defined in 16 C.F.R. § 433.1(e) & (f). Furthermore, Defendants CB and CAC  
8 are the current “holder” of a “consumer credit contract” under 16 C.F.R. § 433.2 with  
9 Plaintiffs, and the putative class, as hereinafter alleged.

11 18. At all relevant times herein mentioned, Defendant HCALV had a “business  
12 arrangement” as defined under 16 C.F.R. § 433.1(g) with Defendant CAC. By virtue of  
13 said relationship and the nature of the transaction being a “financed” purchase of a  
14 consumer service pursuant to 16 C.F.R. § 433.2, and there being a “business  
15 arrangement” as defined under 16 C.F.R. § 433.1(g) between HCALV and CAC, Plaintiffs

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17 <sup>2</sup> This contractual language is required by 16 C.F.R. §§ 433.1 and 433.2 to be in all consumer credit  
18 contracts which makes such terms and conditions a matter of state contract law. However it should be  
19 noted that Plaintiff has not plead a claim for relief based on the provisions of what is commonly known as  
20 the “FTC Holder Rule,” as said C.F.R. sections do not establish a private claim for relief under their  
21 provisions. *See cases infra*. Federal question jurisdiction does **not** arise when a state court plaintiff  
22 alleges that a federal statute provides a standard of care or conduct, or otherwise refers to federal authority  
23 as evidence that a defendant violated state law. *See, e.g., ARCO Env'tl. Remediation, L.L.C. v. Dep't of*  
24 *Health and Env'tl. Quality of Montana*, 213 F.3d 1108, 1113 (9th Cir. 2000). It has been widely held that  
25 the mere mention of the provisions of the “FTC Holder Rule” in a Complaint does not confer federal  
26 question jurisdiction if the Plaintiff is relying only on its provisions for purposes of making a *state claim*  
27 against the subsequent “holder” of the “consumer credit contract.” i.e. the lender who was the assignee of  
28 the contract and who currently holds the note to whom payments are due and who holds the security  
interest in the collateral under the RISC. *Glovier v. Barton Homes, LLC*, 452 F. Supp. 2d 657, (W.D. La.,  
2006) [holding purchasers' action did not arise under federal law as required for federal-question  
jurisdiction, notwithstanding purchasers' reliance on FTC holder rule], see also *Mathis vs Gibson* 2008 WL  
2330537 (D.S.C. 2008) [holding Federal District Court did not have federal question jurisdiction based on  
the assertion of state law claims, as permitted by the FTC Holder Rule, against a subsequent holder],  
*Frichhorn vs Lake County Chrysler* 2006 WL 2970236 (N.D. Ohio, 2006) [holding a complaint's reference  
to the FTC Holder Rule either to provide the applicable standard of care or additional evidence of a state-  
law violation-does not create a federal question jurisdiction], *Morales v. Walker Motors Sales, Inc.* 162 F.  
Supp. 2d 786 (S.D. Ohio, 2000) [holding there is no private right of action under the “FTC Holder Rule” in  
an of itself without a state law derivative claim which would make violation of the FTC Holder Rule a  
violation of state law.].

1 can assert any claim or defense against CAC that Plaintiff could assert against HCALV,  
2 the “seller” of the services under its installment sale contract with the Plaintiff.  
3 Furthermore, CAC was a subsequent assignee of Plaintiff’s installment sale contract with  
4 HCALV.<sup>3</sup>

5           19. On March 3, 2010, Plaintiff KB entered into a “long term medical services  
6 contract” for a ten (10) year term with Defendant HCA at the HCA Defendants’ imaging  
7 facility and local office in Las Vegas, Nevada. Under the terms of the contract with the  
8 Plaintiff, HCA was to perform or have performed various annual radiological imaging  
9 studies on the Plaintiff, including the heart, lungs and pelvis, and one full body scan on  
10 an annual basis for the total amount of \$ 3,995.00. The HCA contract required the  
11 Plaintiff to pay an initial enrollment fee of \$ 199.00, which he did, as well as an \$ 199.00  
12 “annual fee” for every successive year of the full term of the contract.  
13

14           20. On the same day Plaintiff KB entered into the aforementioned contract  
15 with HCA, Plaintiff also applied for and was granted and entered into a revolving credit  
16 line contract with CB through “*ChaseHealthAdvance*” to finance the purchase of the  
17 contract with HCA for the total of \$ 3,995.00. Plaintiff became obligated to pay CB this  
18 amount, and Plaintiff has made payments to CB and continues to do so with respect to  
19 his financed purchase of one of Defendant HCA’s contracts.  
20

21           21. On December 11, 2010, Plaintiff SL entered into a “long term medical  
22 services contract” for a ten (10) year term with Defendant HCALV at the HCA  
23 Defendants’ imaging facility and local office in Las Vegas, Nevada. Under the terms of  
24 the contract with the Plaintiff, Defendant HCALV was to perform various annual  
25 radiological imaging studies on the Plaintiff, including the heart, lungs and pelvis, and  
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27  
28 <sup>3</sup> See FN 2 supra.

1 one full body scan on an annual basis for the total amount of \$2,495.00. The HCALV  
2 contract required the Plaintiff to pay an initial enrollment fee of \$ 249.00, which she  
3 did, as well as an \$ 149.00 “annual fee” for every successive year of the full term of the  
4 contract.

5         22. Based on information and belief, on the same day Plaintiff SL entered into  
6 the aforementioned contract with HCALV, Plaintiff applied for and was extended credit  
7 with CAC to finance the purchase of the contract with HCALV for the total of \$ 2,495.00  
8 for a term of 36 months. HCALV then assigned its contract (installment sale contract)  
9 to CAC, wherein Plaintiff SL then became obligated to pay CAC any and all payments  
10 under said contract, and Plaintiff has made payments to CB in the amount of  
11 approximately \$ 713.00 to date with respect to her financed purchase of one of  
12 Defendant HCALV’s contracts.

13         23. At all relevant times herein mentioned, Plaintiffs, and the putative class as  
14 herein defined, have complied with all of the terms and conditions of their long term  
15 medical services contracts, except as to those terms and conditions which have been  
16 excused due to the illegality or deceptive nature of said contracts as herein alleged, or  
17 due to the material breach of Defendants HCA and/or HCALV, as hereinafter  
18 mentioned. At all relevant times mentioned, Defendant HCA has been fully paid by CB  
19 for Plaintiff KB’s financed purchase of one of HCA’s long term medical services  
20 contracts. It is unknown at this time if Defendant HCALV has been fully paid for the  
21 assignment of Plaintiff SL’s contract.

22         24. At all relevant times herein mentioned, Defendants were the partners,  
23 joint venturers, co-conspirators, agents, successors in interest, servants, and employees  
24 of each and every other Defendant herein, and were acting at all times within the scope,  
25 purpose and authority of said partnership, joint venture, agency, service, employments  
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1 and conspiracy, and with the knowledge, consent, permission, acquiescence and  
2 ratification of their co- Defendants.

### 3 CLASS ACTION ALLEGATIONS

4 25. Plaintiffs herein incorporate by reference and hereby reallege paragraphs 1  
5 through 24.

6 26. Plaintiffs KB and SL bring this action for themselves and on behalf of all  
7 other persons similarly situated. More specifically, the classes Plaintiffs seek to  
8 represent are composed of and defined as follows:  
9

#### 10 Class Number One

11 All individual Nevada consumers who, from six (6) years prior to the filing  
12 of the original Complaint through the present, who entered into a “long  
13 term medical service contract” with Defendant HCA (meaning contracts  
14 for annual radiological imaging services for which the contract’s term was  
15 for more then one calendar year), wherein the aggregate charge for the  
16 purchase of said “long term medical service contract” was financed  
17 through CB’s “ChaseHealthAdvance” revolving credit account, and who  
18 also became obligated to pay and/or did actually pay CB any amounts  
19 under its “ChaseHealthAdvance” revolving credit account, which  
20 represented payment of and/or towards the financed purchase of a “long  
21 term medical service contract” with Defendant HCA, and who were  
22 charged and paid the \$ 199.00 initial enrollment fee or any other  
23 “enrollment fee.” Specifically excluded from the class are the Defendants’  
24 officers, directors, or employees and any federal, state, or local  
25 governmental entity, and any judge, justice, or judicial officer presiding  
26 over this matter and the members of their immediate families and judicial  
27 staffs.”  
28

#### Class Number Two

29 All individual Nevada consumers who, from six (6) years prior to the filing  
30 of the original Complaint through the present, who entered into a “long  
31 term medical service contract” with Defendant HCALV (meaning contracts  
32 for annual radiological imaging services for which the contract’s term was  
33 for more then one calendar year), wherein the aggregate charge for the  
34 purchase of said “long term medical service contract” was financed by  
35 CAC, and who also became obligated to pay and/or did actually pay CAC  
36 any amounts to CAC which represented payment of and/or towards the  
37 financed purchase of a “long term medical service contract” with  
38 Defendant HCALV, and who were charged and paid a \$ 249.00 initial  
enrollment fee or any other “enrollment fee.” Specifically excluded from

1 the class are the Defendants' officers, directors, or employees and any  
2 federal, state, or local governmental entity, and any judge, justice, or  
3 judicial officer presiding over this matter and the members of their  
4 immediate families and judicial staffs."

### 5 **Class Number Three**

6 All individual Nevada consumers who, from six (6) years prior to the filing  
7 of the original Complaint who either financed or paid cash for any "long  
8 term medical service contract" with Defendants HCA or HCALV (meaning  
9 contracts for annual radiological imaging services for which the contract's  
10 term was for more than one calendar year), who actually paid and/or  
11 continue to be charged an "annual fee" by CAC under said contracts at any  
12 time in 2011 through the present. Specifically excluded from the class are  
13 the Defendants' officers, directors, or employees and any federal, state, or  
14 local governmental entity, and any judge, justice, or judicial officer  
15 presiding over this matter and the members of their immediate families  
16 and judicial staffs."

### 17 **NUMEROSITY**

18 27. Plaintiffs are informed and believe that the number of long term medical  
19 services contracts entered into with Nevada consumers are more than 40 but less than  
20 100 at this time, but the persons in the class are still so numerous to make joinder of all  
21 such persons impracticable, and the disposition of their claims in a class action, rather  
22 than any individual actions will benefit the parties and the Court and is the most efficient  
23 and fair way to resolve the controversy.<sup>4</sup>

### 24 **COMMONALITY**

25 28. There is a well-defined commonality of interest in the questions of law  
26 and/or fact involving the Plaintiff and the class (as herein defined) in that:

27 (a) The contracts and/or their terms and conditions under said contracts  
28 at issue with Defendants HCA, HCALV, CB and CAC's were all  
standardized and uniform with all consumers, including the Plaintiffs.

(b) All of Defendant HCA and HCALV's contracts at issue were entered  
into via either HCALV HCAS or HCA employees, and were presented and

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<sup>4</sup> The total aggregate amount of damages sought in this case at this time, is less than \$ 5,000,000.00, exclusive of interest and costs.

1 given to the consumer by HCA, HCALV and/or HCAS employees at the  
2 instruction of and/or on behalf of Defendant HCA or HCALV.

3 (c) At the time Nevada consumers entered into one of Defendant HCA OR  
4 HCALV's long term medical services contracts, none of radiological  
5 imaging services could be legally performed in the State of Nevada under  
6 said contracts ***unless*** those specific radiological imaging tests were ***first***  
7 specifically authorized by a licensed health care practitioner, via a referral  
8 (doctor's order), identifying the specific type of radiological scan, and a  
9 description of the specific part, organ or portion of the body that is  
supposed to be scanned.

10 (d) None of radiological imaging services to be performed under  
11 Defendant HCA or HCALV's contract disclosed or otherwise informed the  
12 consumer that ***none*** of the radiological imaging services under said long  
13 term medical service contract could be performed on the consumer under  
14 Nevada law, ***unless*** those specific radiological imaging tests provided for  
15 under said contract were ***first*** specifically authorized by a licensed health  
16 care practitioner, via a referral (doctor's order), identifying the specific  
17 type of radiological scan and a description of the specific part, organ or  
18 portion of the body that is supposed to be scanned.

19 (e) All of the long term medical services contracts were breached by  
20 Defendant HCA or HCALV.

21 (f) All consumers, including the plaintiffs, were charged and initial  
22 enrollment fee under one of Defendant HCA or HCALV's long term  
23 medical service contracts.

24 (g) All consumers, including the plaintiffs, were charged and/or continue  
25 to be charged and/or actually paid for the purchase of one of Defendant  
26 HCA or HCALV's long term medical service contracts.

27 (h) All consumers, including the Plaintiffs financed the purchase of one of  
28 Defendant HCA's contracts through CB or CAC.

(i) All consumers, including the Plaintiffs were charged for and/or paid  
and/or will continue to be charged for an annual fee under HCA or  
HCALV's contracts

1 (j) All consumers, including the Plaintiffs, either became legally obligated  
2 to pay CB or CAC and/or actually did pay or made payments to CB or CAC  
3 for the purchase of one of Defendant HCA or HCALV's long term medical  
4 services contracts.

5 (k) All consumers, including the Plaintiff's either became legally obligated  
6 to pay and/or actually did pay for the purchase of one of Defendant HCA's  
7 or HCALV's long term medical services contracts.

8 **PREDOMINANCE**

9 29. The common questions of law and fact predominate over any questions  
10 that affect only the representative class member, if there is any differentiation at all.

11 **TYPICALITY**

12 30. The claims of the Plaintiffs are typical of those of the class in that Plaintiffs  
13 and those similarly situated seek damages, restitution, and declaratory and injunctive  
14 relief which forms the basis of said claims which were effectuated through the same  
15 standardized contracts and were the product of the same underlying fundamental  
16 improper conduct perpetrated through the same conduct, making the class claims  
17 susceptible to the same class wide proof at time of trial.

18 **ADEQUACY**

19 31. The Plaintiffs will fairly and adequately represent the interests of the class  
20 and have no interests antagonistic to the class, and their counsel is experienced and  
21 knowledgeable in complex class action litigation.

22 **SUPERIORITY**

23 32. There is no plain, speedy or adequate remedy other than maintenance of  
24 this class action since Plaintiffs are informed and believe that the prosecution of  
25 individual remedies by members of the Plaintiff classes would tend to establish  
26 inconsistent standards of conduct for the Defendants, would lead to inconsistent legal  
27

1 and factual adjudications, and would result in impairment of class members' rights and  
2 the disposition of their interest in actions to which they were not parties. Class action  
3 treatment is superior to any other means of handling these claims.

4 **MANAGEABILITY AND ASCERTAINMENT OF THE CLASS**

5 33. Plaintiffs do not foresee any difficulties in the management or  
6 ascertainability of the case as a class action. All putative class members are individually  
7 identifiable by their names and addresses through the records of the Defendants, and  
8 notice via first class mail is the best possible notice under the circumstances. The class, if  
9 certified, will proceed as an opt-out class and any class member not wanting to be bound  
10 may opt out should he or she choose to do so.

12 **I**

13 **FIRST CLAIM FOR RELIEF FOR BREACH OF CONTRACT**  
14 **AGAINST DEFENDANTS HCA, HCALV, CB & CAC ONLY**

15 34. Plaintiffs incorporate by reference and herein and hereby realleges  
16 paragraphs 1 through 32.

17 35. On or about May of 2011, Plaintiff KB attempted to schedule his scans for  
18 the second year of his contract, upon which it was discovered that the HCA Defendants  
19 had closed their doors to their facility in Las Vegas. Plaintiff KB could not make his  
20 appointment, as the HCA's Defendants' phone had been disconnected to their local  
21 office, and apparently the HCA Defendants imaging center had been vacated and ceased  
22 all operations, however, Plaintiff continues to make payments to CB for the financing of  
23 the long term medical services contract he entered into with Defendant HCA.  
24 Furthermore, Plaintiff SL underwent her first scans, but never received her initial results.  
25 Furthermore, like Plaintiff KB, Plaintiff SL is unable to make any further appointments  
26 under her contract with HCALV as it appears to have closed its doors and ceased  
27  
28

1 operations. Furthermore, despite HCALV ceasing operations and entering into illegal  
2 and/or deceptive contracts, CAC is still demanding payment of the balance of her HCALV  
3 financed contract with it.

4 36. Defendants HCA and HCALV breached their aforementioned contracts  
5 with the Plaintiffs, and the putative class, by failing to perform its obligations under the  
6 contract as herein alleged.

7  
8 37. As a direct and proximate result of the Defendants' material breach  
9 Plaintiffs, and those similarly situated, based on the individualized amounts of their  
10 claims, have been individually damaged in an amount not in excess of \$75,000.00.

11 **II**

12 **SECOND CLAIM FOR RELIEF FOR BREACH OF THE**  
13 **COVENANT OF GOOD FAITH AND FAIR DEALING AGAINST**  
14 **DEFENDANTS HCA, HCALV, CB & CAC ONLY**

15 [Non Tortuous Breach]

16 38. Plaintiffs incorporate by reference and herein and hereby reallege  
17 paragraphs 1 through 36.

18 39. By virtue of the aforementioned contracts, Defendants HCA and HCALV  
19 owed a duty of good faith and fair dealing with respect to its performance under the  
20 contracts.

21 40. On or about May of 2011, Defendant HCA breached the covenant of good  
22 faith and fair dealing, thereby depriving the Plaintiffs of their reasonable expectations  
23 and the benefit of the bargain under the aforementioned contract.

24  
25 41. As a direct and proximate result of the Defendants' breach, Plaintiffs, and  
26 those similarly situated, based on the individualized amounts of their claims, have been  
27 individually damaged in an amount not in excess of \$75,000.00.

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**III**

**THIRD CLAIM FOR RELIEF FOR DECEPTIVE TRADE  
PRACTICES AS AGAINST DEFENDANTS HCA, HCALV, HCAS, CB & CAC**

[NRS 41.600; Consumer Fraud]

42. Plaintiffs herein incorporate by reference and hereby realleges paragraphs 1 through 40.

43. On or about March of, 2010, pursuant to NRS §§ 598,0915, 598.0923, the HCA Defendants knowingly engaged in the following deceptive trade practices :

- A. Failing to disclose a material fact in connection with the sale of ... services<sup>5</sup>
- B. Making false or misleading statements of fact concerning the price of services... for sale.<sup>6</sup>
- C. Conducting a business or occupation without all required state, county or city licenses.<sup>7</sup>
- D. Making any other false representation in a transaction.<sup>8</sup>

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<sup>5</sup> Nowhere in any of the long term medical services contract entered into with the Plaintiff, including those entered into with the putative class, as herein defined, did any of the HCA Defendants inform the consumer that ***none*** of the radiological imaging tests that were to be provided for under Defendant HCA or HCALV's contract, could be provided to the consumer under Nevada law, ***unless they were first authorized by a*** referral from an authorized medical practitioner for the ***specific type*** radiological imaging studies to be performed to the specific portions of the patient's body. Such a referral would, by necessity, also require the consumer to first be seen by an authorized medical practitioner prior to receiving a referral for the radiological imaging studies. See NAC 459.554.3. NAC 495.554.3 requires that any patient undergoing any radiological imaging must receive, prior to such medical procedure being performed, a referral or authorization from a licensed medical practitioner; consequently, the HCA Defendants were prohibited from performing such medical procedures without said prior referrals. The HCA defendants were essentially entering into and/or facilitating the entering into of illegal contracts for medical services with the consuming public because said HCA Defendants were in fact conducting such radiological imaging studies without any referral and/or authorization of a medical practitioner for such radiological imaging studies.

<sup>6</sup> By not disclosing to the consumer that he or she had to obtain an annual appointment to see an licensed medical practitioner to authorize any of the radiological imaging studies under Defendant HCA or HCALV's long term medical imaging contracts, the HCA Defendants did not disclose these other ancillary costs that would be associated with the performance their contracts and which would be specifically borne by the consumer, notwithstanding that said contracts were illegal and/or deceptively engaged in.

<sup>7</sup> Defendant HCA was not a registered corporation with the Nevada Secretary of State authorizing it to conduct any business in Nevada. It was not registered with any City or County Agency for its business, and was not licensed with the Nevada Department of Taxation or the Nevada Department of Health and Human Services. It was not authorized to conduct any business whatsoever in Nevada with Nevada consumers.

<sup>8</sup> See footnotes immediately supra.

1 E. Violating a state or federal statute or regulation relating to  
2 the sale ... of goods ...”<sup>9</sup>

3 44. As a direct and proximate result of the Defendants’ deceptive conduct  
4 and/or omissions, Plaintiff, and those similarly situated, based on the individualized  
5 amounts of their claims, have been damaged in an amount not in excess of \$ 75,000.00.

6 45. Furthermore, the HCA Defendants, by intentionally engaging in the  
7 aforementioned deceptive trade practices, have acted willfully, intentionally, maliciously  
8 and fraudulently, with intent to deceive and mislead and defraud the Plaintiff and the  
9 putative class, with great recklessness and carelessness in total disregard of the  
10 consequences of their intentional actions upon Plaintiff and the putative class, thereby  
11 entitling the Plaintiff and Plaintiff class to exemplary/punitive damages as against the  
12 HCA Defendants only.  
13

14 **IV**

15 **FOURTH CLAIM FOR RELIEF FOR CONSPIRACY TO**  
16 **ENGAGE IN DECEPTIVE TRADE PRACTICES AS**  
17 **AGAINST DEFENDANTS HCA, HCALV AND HCAS ONLY**

18 [NRS 41.600; Consumer Fraud]

19 \_\_\_\_\_  
20 <sup>9</sup> 16 C.F.R. § 433.2(b) [a federal regulation “relating to the sale of goods”], entitled “preservation of  
21 consumers’ claims and defenses, unfair or deceptive acts or practices” states : [i]n connection with any sale  
22 or lease of goods or services to consumers, in or affecting commerce as “commerce” is defined in the  
23 Federal Trade Commission Act which states : “it is an unfair or deceptive act or practice within the  
24 meaning of section 5 of that Act for a **seller**, directly or indirectly, to: (a) take or receive a consumer credit  
25 contract which fails to contain the following provision [*see infra below*] in at least ten point, bold face, type  
26 or (b) accept, as full or partial payment for such sale or lease, the proceeds of any purchase money loan (as  
27 purchase money loan is defined herein), **unless** any consumer credit contract made in connection with  
28 such purchase money loan **contains the following provision** in at least ten point, bold face, type:  
NOTICE : ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND  
DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES  
OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT  
EXCEED AMOUNT. HCALV’ installment sale contract aka consumer credit contract, did not contain this  
mandatory language which **was required** to be in HCALV’s installment contract because HCALV  
specifically referred and/or “steered” Plaintiff SL to CAC to obtain financing for HCALV’s contract,  
consequently HCALV and CAC had a “business arrangement.” It was mandatory for HCALV’s contract to  
contain this notice to ensure that consumer’s were informed that any defense or claim they could assert  
against the HCALV they could also assert against CAC or any other “holder” of the HCALV’s contract.

1           46. Plaintiffs herein incorporate by reference hereby reallege paragraphs 1  
2 through 44.

3           47. Within four years prior to March 1, 2010, pursuant to NRS §§ 598,0915  
4 598.0923, the HCA defendants agreed with each other and conspired to knowingly  
5 engaged in the following deceptive trade practices :

- 6           A. Failing to disclose a material fact in connection with the  
7 sale of ... services<sup>10</sup>
- 8           B. Making false or misleading statements of fact concerning  
9 the price of services... for sale.<sup>11</sup>
- 10          C. Conducting a business or occupation without all required  
11 state, county or city licenses.<sup>12</sup>
- 12          D. Knowingly making any other false representation in a  
13 transaction.<sup>13</sup>

14           48. As a direct and proximate result of the Defendants' conspiracy, and those  
15 similarly situated, based on the individualized amounts of their claims, Plaintiffs have

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16 <sup>10</sup> The HCA defendants all knew and conspired at the time they were entering into these "long term  
17 medical services" contracts" with Nevada consumers that **none** of the radiological imaging tests which  
18 were to be provided for under the HCA contracts could be provided to the consumer under Nevada law,  
19 **unless they first obtained** a referral from an authorized medical practitioner for the specific type  
20 radiological imaging studies to be preformed to the specific portions of the patient's body. Such a referral  
21 would, by necessity, also require the consumer to first be seen and screened by an authorized medical  
22 practitioner prior to receiving a referral for the radiological imaging studies. The HCA Defendants knew  
23 this to be the case, and conspired among themselves to not disclose this to the consumer. See NAC  
24 459.554.3 which requires that for any patient to undergo radiological imaging, a prior referral and/or  
25 authorization from a licensed medical practitioner must first be obtained, and in the absence of such prior  
26 referral, no such radiological imaging may be performed.

27 <sup>11</sup> By not disclosing to the consumer that he or she had to obtain an appointment and see a licensed  
28 medical practitioner to authorize any of the radiological imaging studies under HCA's "long term medical  
imaging contracts," the HCA Defendants did not disclose these other ancillary costs would be associated  
with their contracts and would be specifically borne by the consumer.

<sup>12</sup> All the HCA Defendants knew that HEART CHECK AMERICA INC., was not a registered corporation  
with the Nevada Secretary of State authorizing it to conduct any business in Nevada, it was not registered  
with any City or County Agency for its business, and was not licensed with the Nevada Department of  
Taxation or the Nevada Department of Health and Human Services. Defendants conspired among  
themselves to circumvent the registration and/or licensing requirements under Nevada law vis-à-vis  
HEART CHECK AMERICA INC engaging in business in the state of Nevada. More specifically HCALV  
and HCAS knew Defendant HCA was not licensed to do to conduct any business in Nevada actually but  
actively facilitated Nevada consumers to entered into the long term medical services contracts with  
Defendant HCA, as herein alleged.

<sup>13</sup> See footnotes immediately supra.

1 been damaged in an amount not in excess of \$ 75,000.00.

2 49. Furthermore, the HCA Defendants, by conspiring to engage in the  
3 aforementioned deceptive trade practices, have acted willfully, intentionally, maliciously  
4 and fraudulently, with intent to deceive and mislead the Plaintiffs, and the putative class,  
5 with great recklessness and carelessness in total disregard of the consequences of their  
6 intentional actions upon Plaintiffs and the putative class, thereby entitling the Plaintiffs  
7 and Plaintiff class to exemplary/punitive damages.  
8

9 **V**

10 **FIFTH CLAIM FOR EQUITABLE ESTOPPEL AGAINST**  
11 **DEFENDANTS HCA, HCALV, CB & CAC ONLY**

12 50. Plaintiffs herein incorporate by reference and hereby reallege paragraphs 1  
13 through 48.

14 **51.** At all relevant times herein mentioned, the HCA Defendants were fully  
15 apprised and aware that Defendant HCA was not authorized to conduct any business in  
16 the State of Nevada with Nevada consumers, and said Defendants further knew at the  
17 time the consumer entered into one of the aforementioned long term medical service  
18 contacts that none of the radiological imaging studies could be undertaken under said  
19 long term medical service contracts without a licensed health care practitioner  
20 authorizing such testing via a referral for each radiological exam provided for under said  
21 contracts.  
22

23 52. At all relevant times herein mentioned, the HCA Defendants intended the  
24 Plaintiffs and the putative class to act upon the HCA Defendants' deceptive conduct  
25 and/or omissions, as herein alleged, with respect to inducing the consumer to entering  
26 into one of HCA or HCALV's long term medical services contracts.  
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1 Plaintiffs, and the putative class are entitled to rescission of their “long terms medical  
2 services contracts,” with HCA and HCALV, as well as their contracts with Defendant CB  
3 and CAC.

4 57. Furthermore, upon rescission being granted, Plaintiffs and the putative  
5 class are entitled to return and/or restitution of all monies tendered to said Defendants,  
6 as Defendants have been unjustly enriched, and Defendants hold for the benefit of the  
7 Plaintiffs, and the putative class, as constructive trustee, any and all sums collected from  
8 the Plaintiffs and the putative class thus far; sums which were collected as a result of the  
9 Plaintiffs and the putative class entering into the aforementioned HCA contracts.  
10

11 58. As a direct and proximate result of the Defendants’ conduct and omissions,  
12 Plaintiffs, and those similarly situated, based on the individualized amounts of their  
13 claims, have been damaged in an amount not in excess of \$ 75,000.00.  
14

## 15 VII

### 16 SEVENTH CLAIM FOR UNJUST ENRICHMENT/ 17 RESTITUTION AS AGAINST DEFENDANT CAC ONLY

18 59. Plaintiffs hereby incorporate by reference and herein reallege paragraphs 1  
19 through 57.

20 60. Based upon information and belief, Defendant CAC was assigned the right  
21 from Defendant HCA to bill and collect the “annual fee” under Defendant HCA’s  
22 contracts which were financed by CB, or with respect to those contracts which the  
23 consumer paid cash. Defendant CAC has in fact collected and unjustly retained these  
24 annual fees under HCA’s contracts, and continues to bill and demand payment for these  
25 annual fees from Nevada Consumers who were parties to one of Defendant HCA’s  
26 contracts, despite that said contracts were illegal and/or were entered into by using  
27 deceptive practices, as herein alleged, in addition to the fact that HCA has materially  
28

1 breached its obligations under said contracts.

2 61. Plaintiff KB and the putative class do not have any contractual relationship  
3 with Defendant CAC.

4 62. At all relevant times herein mentioned, Defendant CAC holds as  
5 constructive trustee for the benefit of the class, any and all sums it collected based upon  
6 the collection and retention of any \$ 199.00 “annual fee” collected in or after 2011, when  
7 the HCA defendants ceased doing business.  
8

9 **63.** As a direct and proximate result of the Defendants’ conduct and omissions,  
10 Plaintiff, and those similarly situated, based on the individualized amounts of their  
11 claims, have been damaged in an amount not in excess of \$ 75,000.00.

12 **VIII**

13 **EIGHTH CLAIM FOR RELIEF FOR DECLARATORY**  
14 **RELIEF AS AGAINST DEFENDANTS HCA, HCALV, CB AND CAC**

15 65. Plaintiffs hereby incorporate by reference and herein realleges paragraphs  
16 1 through 63.  
17

18 66. An actual controversy has arisen and now exists between the Plaintiffs,  
19 and all those similarly situated, in regards to the legality of as well as the rights and  
20 liabilities under HCA and HCALV’s long term medical services contracts, and with  
21 respect to the consumer’s rights and liabilities under CB and CAC’s contracts for the  
22 financing of HCA and HCALV’s contracts, including the consumer’s continuing duty to  
23 pay the required annual fee under said long term medical services contracts, as well as  
24 their duty to make any further monthly payments with respect to the consumer’s  
25 financed the purchase of one of HCA’s contract through CB or CAC. Plaintiffs, and the  
26 putative class contend HCA and HCALV’s contracts were deceptively entered into, were  
27 illegal and/or against public policy at the time they were entered into, as no radiological  
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1 medical provider in the state of Nevada is allowed to undertake, any radiological  
2 imaging with a consumer/patient without a specific referral and authorization for such  
3 imaging testing first being authorized and/or requested by an authorized licensed  
4 medical practitioner identifying the specific areas and/or organs to be imaged based on  
5 medical necessity.

6  
7 67. Plaintiffs, and the putative class further contend that based upon the  
8 deceptive trade practices engaged in by the HCA defendants, as well as the material  
9 breach of the contracts by Defendant HCA and HCALV, as herein alleged, and based  
10 upon Plaintiffs and the putative class not obtaining the benefit of the bargain under said  
11 contracts, that Plaintiffs, on behalf of the putative class, are entitled to a declaratory  
12 judgment with respect to rescission of their contracts with said Defendants, as well as  
13 with CB and CAC.

14  
15 68. Plaintiffs, on behalf of the putative class further contend that they are no  
16 longer under any obligation to continue to pay CB or CAC any more payments based on  
17 the deceptive trade practices and material breach of Defendants HCA and HCALV  
18 Finally, Plaintiffs, on behalf of the putative class contend they are entitled to restitution  
19 of all sums paid to any of the HCA Defendants, CB and CAC based upon the Plaintiffs  
20 and the putative class entering into the “long term medical services” contracts with HCA  
21 and HCALV.

22  
23 69. Defendants allege that their contracts are valid and enforceable, and that  
24 Plaintiff and the putative class are not entitled to rescission and/or restitution or as  
25 herein demanded and that Plaintiff and the putative class still have a continuing  
26 obligation to make monthly payment CB or CAC under their contracts with said  
27 Defendants.



1           74. Based on the allegations set forth herein, Plaintiffs have a reasonable  
2 probability of success on the merits with respect to their claims, and such continuing  
3 conduct on the part of said Defendants will cause irreparable harm to consumers

4           **WHEREFORE**, Plaintiffs, and those similarly situated, pray for judgment as  
5 follows :

6                           **On First Claim for Relief:**

- 7           1. For special damages not in excess of \$ 75,000.00 for each class member's  
8 individualized claim, and  
9           2. For prejudgment interest, and  
10          3. For reasonable attorneys fees, and  
11          4. For costs of suit incurred herein, and  
12          5. For such other and further relief as the Court deems just and proper.

13                           **On Second Claim for Relief:**

- 14          1. For special damages not in excess of \$ 75,000.00 for each class member's  
15 individualized claim, and  
16          2. For prejudgment interest, and  
17          3. For reasonable attorneys fees, and  
18          4. For costs of suit incurred herein, and  
19          5. For such other and further relief as the Court deems just and proper.

20                           **On Third Claim for Relief:**

- 21          1. For special damages not in excess of \$ 75,000.00 for each class member's  
22 individualized claim, and  
23          2. For exemplary damages, according to proof, and  
24          2. For prejudgment interest, and  
25          3. For reasonable attorneys fees, and  
26          4. For costs of suit incurred herein, and  
27          5. For such other and further relief as the Court deems just and proper.  
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**On Fourth Claim for Relief**

1. For special damages not in excess of \$ 75,000.00 for each class member’s individualized claim, and
2. For exemplary damages, according to proof, and
2. For prejudgment interest, and
3. For reasonable attorneys fees, and
4. For costs of suit incurred herein, and
5. For such other and further relief as the Court deems just and proper.

**On Fifth Claim for Relief.**

1. For a declaration estopping the HCA Defendants from contending its contract is valid and/or enforceable.
2. For a declaration estopping Defendant CB from contending that it was entitled to charge and continuing to charge consumers for the purchase of an HCA contract,
3. For reasonable attorneys fees, and
4. For costs of suit incurred herein, and
5. For prejudgment interest, and
6. For such other and further relief as the Court deems just and proper.

**On Sixth Claim for Relief:**

1. For a judicial declaration rescinding the HCA and CB contracts.
2. For a judicial declaration entitling Plaintiff and the putative class to restitution of all monies paid,
3. For costs of suit incurred herein, and
4. For reasonable attorneys fees, and
5. For such other and further relief as the Court deems just and proper.

**On Seventh Claim for Relief**

1. For a judicial declaration entitling Plaintiff and the putative class to restitution of all annual fees paid after the HCA Defendants ceased doing business in Nevada, and
2. For costs of suit incurred herein, and
3. For reasonable attorneys fees, and
4. For such other and further relief as the Court deems just and proper.

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**On Eighth Claim for Relief:**

1. For a declaratory judgment estopping HCA and CB from asserting their contract is valid or enforceable,
2. For a declaratory judgment entitling Plaintiff and the putative class to restitution of all amounts paid,
3. For a declaratory judgment declaring the HCA illegal and/or unenforceable.
4. For prejudgment interest, and
5. For reasonable attorneys fees, and
6. For costs of suit incurred herein, and
7. For such other and further relief as the Court deems just and proper.

**On Ninth Claim for Relief:**

1. For a prohibitory injunction enjoining the HCA and CAC defendants, their agents, assigns, successors, either directly or indirectly, from collecting any “annual fees” under any of Defendant HCA’s contracts as herein alleged.
2. For reasonable attorneys fees, and
3. For costs of suit incurred herein, and
4. For such other and further relief as the Court deems just and proper

**PLAINTIFF HEREBY DEMANDS JURY**

Dated this 14<sup>th</sup> day of August, 2011

By /s/ George O. West III  
GEORGE O. WEST III  
Attorney for Plaintiff

**KENNETH BARTH, SANDRA LANE,  
individually, and on behalf of all others similarly situated**