

<p>DISTRICT COURT, ADAMS COUNTY, STATE OF COLORADO</p> <p><b>Court Address:</b> 1100 Judicial Center Dr. Brighton, Colorado 80601 303-659-1161</p>	<p>▲ COURT USE ONLY</p>
<p><b>Plaintiffs:</b> CENTURA HEALTH CORPORATION; CATHOLIC HEALTH INITIATIVES COLORADO D/B/A ST. ANTHONY NORTH HEALTH CAMPUS</p> <p>v.</p> <p><b>Defendant:</b> LISA MELODY FRENCH</p>	<p>Case No. 2017CV030884</p> <p>Division A</p>
<p>Traci L. Van Pelt, Atty. No. 26483 Michael T. McConnell, Atty. No. 10600 David A. Belsheim, Atty. No 43767 McConnell Fleischner Houghtaling, LLC 4700 South Syracuse Street, Suite 200 Denver, CO 80237 Phone Number: (303) 480-0400 Fax Number: (303) 458-9520 <a href="mailto:tvanpelt@mfhlegal.com">tvanpelt@mfhlegal.com</a> <a href="mailto:mmcconnell@mfhlegal.com">mmcconnell@mfhlegal.com</a> <a href="mailto:dbelsheim@mfhlegal.com">dbelsheim@mfhlegal.com</a> <i>Attorneys for Plaintiffs</i></p> <p>Frank C. Porada, Atty. No. 27131 FISHERBROYLES, LLP 1400 16th Street 16 Market Square, Ste. 400 Denver, CO 80202 Phone Number: (303) 808-4706 <a href="mailto:frank.porada@fisherbroyles.com">frank.porada@fisherbroyles.com</a></p> <p>Kris Alderman FISHERBROYLES LLP 945 E. Paces Ferry Rd., Suite 2000 Atlanta, GA 30326 Phone Number: (404)596-8887 <a href="mailto:Kris.alderman@fisherbroyles.com">Kris.alderman@fisherbroyles.com</a> <i>Attorneys for Defendant</i></p>	

**PROPOSED TRIAL MANAGEMENT ORDER**

Plaintiffs Centura Health Corporation and Catholic Health Initiatives Colorado, doing business as St. Anthony North Health Campus (together may be referred to as "Plaintiffs" or the "Hospital"), and Defendant Lisa French hereby submit the following Proposed Trial Management Order.

**Statement of Claims and Defenses**

**A. Plaintiffs' Claims Against Defendant**

The Plaintiffs are Centura Health and Catholic Health Initiatives d/b/a St. Anthony North, a hospital in the Centura Health system. This is a breach of contract case. The Plaintiffs are Centura Health and St. Anthony North, a hospital in the Centura Health system. On June 2, 2014, the Defendant, Lisa French, underwent a lumbar fusion (a back surgery) performed by her doctor at St. Anthony North. Her back surgery was not an emergency procedure. The surgery was scheduled by her doctor's office. The surgery was successful, and Ms. French's back pain has resolved.

Prior to her June 2, 2014 surgery, Ms. French had two pre-operative visits at St. Anthony. On May 27, 2014, Ms. French registered for the procedure and signed the Hospital Service Agreement and Patient Bill of Rights. Centura and St. Anthony contend these documents formed a binding contract with Ms. French. On May 30, 2014, Ms. French again signed the Hospital Service Agreement and the Patient Bill of Rights. The morning of her back surgery, June 2, 2014, Ms. French once again signed the Hospital Service Agreement and Patient Bill of Rights.

The Hospital Service Agreement states, in part:

**I understand that my rights and responsibilities with regard to my care are described in more detail on the Patient Bill of Rights Document.**  
(Emphasis in original.)

**FINANCIAL AGREEMENT.** I understand that there is no guarantee of reimbursement or payment from any insurance company or other payor. I acknowledge full financial responsibility for, and agree to pay, all charges of the Hospital and of physicians rendering services not otherwise paid by my health insurance or other payor.

I agree to accept the consequences if I disregard my rights and responsibilities.

**I ACKNOWLEDGE THAT I HAVE READ THIS FORM AND UNDERSTAND ITS CONTENTS AND HAVE RECEIVED A COPY HEREOF.**

The Patient Bill of Rights states, in part:

**You have the right to...**

1. Be informed of your patient rights in advance of receiving or discontinuing care when possible.

[¶]

27. Request and receive, prior to the initiation of non-emergency care or treatment, the charges (or estimate of charges) for routine, usual, and customary services and any co-payment, deductible or non-covered charges, as well as the facility's general billing procedures including receipt and explanation of an itemized bill. This right is honored regardless of the source(s) of payment.

**Patient Responsibilities:**

**You have the responsibility to...**

1. Ask questions and promptly voice concerns.

[¶]

10. Understand and honor your financial obligations related to your care, including your own insurance coverage. (Emphasis added.)

Because of the nature of healthcare services and in particular, hospital stays, it is not possible for a hospital to provide a statement of charges before a hospital stay.

Centura contends its patient contracts do not contain a specific price term because it is not possible to state a specific price term before a patient's discharge, since the services and supplies needed by the patient are not known. Centura and St. Anthony contend that the words "all charges" in the Hospital Service Agreements signed by Ms. French means Centura and St. Anthony's chargemaster rates and that Ms. French agreed to pay St. Anthony's chargemaster rates for any services and supplies not paid for by her insurance.

Centura Health and St. Anthony North set their charges for services and supplies using what is known as a chargemaster. Chargemasters are used by hospitals throughout the United States and are standard and customary in the healthcare field. The chargemaster is a database of the amounts to be charged for all services and supplies provided to any patient. Ms. French's bill, like the bills for all other patients, is calculated by adding the pre-determined chargemaster rates for the medical services provided.

Centura and St. Anthony North billed Ms. French for her hospital stay. The total amount charged was \$303,888.16. After payments by insurance and Ms. French's deductible, the outstanding balance for Ms. French's back surgery and hospitalization is \$229,280.78. Centura and St. Anthony contend that pursuant to the Hospital Service Agreements signed by Ms. French, she is contractually obligated to pay St. Anthony's chargemaster rates and the outstanding balance of the bill. Centura and St. Anthony contend Ms. French has breached her contract with them by failing to pay her outstanding balance.

#### **B. Defendant's Defenses to Plaintiffs' Claims**

The amount Plaintiffs have already been paid is equal to or greater than the reasonable value of the goods and services provided to Defendant. Before her surgery,

Plaintiffs told Defendant she would only owe \$1,000 for the surgery, which she promptly paid. If the parties formed a contract for payment, then the contract price was \$1,000, which has been paid. The Hospital Service Agreements do not contain a price, the meaning of the document is ambiguous as to price, and there was no meeting of the minds as to price in the Hospital Service Agreements. Accordingly, the Hospital Service Agreements do not constitute contracts to pay any specific price. Alternatively, if the Hospital Service Agreements constitute contracts to pay for the goods and services, then they only require payment of the reasonable value of the goods and services provided. The reasonable value of goods and services can be determined by reference to the costs to provide them and the amounts typically paid for them. Plaintiffs have already been paid the reasonable value of the services, and they are not entitled to any additional payment. Even if the Hospital Service Agreements are express contracts to pay Plaintiffs' chargemaster rates, as Plaintiffs contend, Plaintiffs cannot prevail on their breach of contract claim for two reasons. First, Plaintiffs cannot prove the amounts billed to Defendant are the same as their chargemaster rates. Second, the chargemaster rates are grossly excessive and Defendant had no choice but to sign the Hospital Service Agreements, making them unconscionable if given the interpretation urged by Plaintiffs. Unconscionable contracts are unenforceable. For the same reasons, the Hospital Service Agreements, even if construed as express contracts to pay chargemaster rates, would be unenforceable because they are contracts of adhesion inconsistent with Defendant's reasonable expectations and violate the implied covenant of good faith and fair dealing. Finally, plaintiffs have waived their claim against defendant.

#### **Stipulated Facts**

The parties stipulate to the following facts:

1. In the spring of 2014, Lisa French met with her surgeon to discuss treatment options for back pain. Ms. French agreed to undergo spinal fusion surgery. Her doctor's office scheduled the surgery to take place on June 2, 2014 at St. Anthony North Health Campus.
2. Prior to her June 2<sup>nd</sup> surgery, Lisa French arrived at the hospital on May 27 and May 30, 2014 for registration and pre-operation testing services.
3. Lisa French received, and signed, the Hospital Service Agreement and Patient Bill of Rights at St. Anthony North Health Campus on May 27, May 30, and June 2, 2014.
4. Lisa French received medical services at St. Anthony North Health Campus on May 27, and June 2, 2014.
5. On June 2, 2014, Lisa French underwent a non-emergent spinal fusion surgery at St. Anthony North. Her surgeon was Dr. Michael Edward Janssen. Lisa French was discharged from St. Anthony North Health Campus on June 6, 2014.
6. Centura/St. Anthony North provided the medical services listed on the itemized statements for services on May 27, and June 2-6, 2014.
7. Centura/St. Anthony charged Lisa French \$2,379.34 for the services provided on May 27, 2014, and \$301,330.14 for the services provided on June 2-6, 2014.
8. On May 30, 2014, Lisa French paid \$1,000 for her surgery scheduled for June 2, 2014.
9. Lisa French's insurance plan paid \$550.53 for the services provided on May 27, 2014, and \$73,046.82 for the services provided on June 2-6.

10. Centura Health billed Lisa French the remainder of each account: \$1,828.81 for the services provided on May 27, 2014, and \$227,283.32 for the services provided on June 2-6, 2014.

### **Pretrial Motions**

The following motions are pending before the Court:

1. Plaintiffs' CRE 702/*Shreck* Motion to Exclude Testimony of Dr. Thomas Getzen.
2. Plaintiffs' Motion for Reconsideration of Denial of Motion to Amend.
3. Defendant's CRE/702 *Shreck* Motion to Exclude the Testimony of Chris Tholen.
4. Defendant's CRE 702/*Shreck* Motion to Exclude the Testimony of Fred Stodolak.
5. Verified Motion for Pro Hac Vice Admission of Thomas E. Lavender III.
6. The parties anticipate filing Motions in Limine on April 30, 2018.

### **Trial Briefs**

The parties anticipate the filing of trial briefs on May 21, 2018.

### **Itemization of Damages or Other Relief Sought**

The Plaintiffs' First Claim for Relief sought a judicial determination that the phrase "all charges of the Hospital" unambiguously referred to the Hospital's chargemaster and required Defendant to pay the full outstanding balance of her accounts. On April 11, 2018, the Court denied Plaintiffs' Motion for Declaratory Judgment after finding that the definition of the term "all charges" within the Hospital Service Agreement was ambiguous. The Court also dismissed Plaintiffs' Third Claim for Relief, Claim on Account Stated.

Plaintiffs' Declaratory Relief Claim and Breach of Contract claims remain to be tried. Plaintiffs seek a declaration on their contract and \$229,280.78 in damages, plus an award of interest, costs and attorneys' fees pursuant to the contract. Defendant contends

the Court has determined the Hospital Service Agreement is ambiguous, precluding entry of the declaration sought by Plaintiffs' First Claim for Relief.

**Identification of Witnesses and Exhibits - Juror Notebooks**

**A. Witnesses**

Plaintiffs' Preliminary Witness List is attached as Exhibit A.

Defendant's Preliminary Witness List is attached as Exhibit B.

**B. Exhibits**

Plaintiffs' Position: Plaintiffs' Preliminary Exhibit List is attached as Exhibit C.

Defendant's Preliminary Exhibit List is attached as Exhibit D.

**C. Juror Notebooks**

Counsel for each party has conferred about the use of electronic exhibits and presentation of exhibits via electronic means. Plaintiffs and Defendant propose using other trial presentation equipment and modes that assist the jury in exhibit presentation, and are working together regarding the logistics thereof.

**D. Deposition and Other Preserved Testimony**

Plaintiffs: The deposition of ELAP Services, Inc. is set for April 30, 2018. Plaintiffs intend to designate the deposition transcript of ELAP Services, Inc.

Defendant: The deposition of Cleverley & Associates is set for May 16, 2018. Defendant may designate testimony from the deposition transcripts of ELAP and/or Cleverley & Associates.

**E. Trial Efficiencies and Other Matters**

This matter is set for a five day jury trial. The parties believe the anticipated length of trial has not changed. The parties have considered the use of technology and intend

to use technology where appropriate to simplify the case and make it more understandable.

The parties have conferred regarding the amount of time requested for juror examination.

The parties request the Court submit a juror questionnaire to veniremen to assist in juror selection. In addition, the parties believe, because of the nature of the case, they need 1 hour each for juror questioning/voir dire.

Certain documents and testimony are subject to the court's protective order or are otherwise confidential. Plaintiffs and Defendant wish to address the mechanics of presenting confidential evidence at the trial management conference.

The parties exchanged preliminary witness, lists, exhibit lists, and exhibits on April 23, 2018. The parties will work together to provide the Court with a stipulated set of exhibits, if possible.

Dated: April 27, 2018

Respectfully submitted,

By: /s/ Traci L. Van Pelt  
Traci L. Van Pelt, Atty. No. 26483  
Attorney for Plaintiffs

By: /s/ Frank C. Porada  
Frank C. Porada, Atty. No. 27131  
Attorney for Defendant