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Attorneys for Plaintiff Christina C. Wray, on behalf of herself and all other similarly situated

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Christina C. Wray, on behalf of herself
and all other similarly situated,

Plaintiff,

No. _____

CLASS ACTION COMPLAINT

vs.

PHI Air Medical, L.L.C., a Louisiana
Limited Liability Company,

Defendant.

1. Plaintiff Christina C. Wray by and through her counsel, brings this action individually and on behalf of a class of others similarly situated, against Defendant Phi Air Medical, L.L.C. because Defendant's agreements with Plaintiff and the class incorporated an undertaking by which the Court was to set the proper amount of compensation for Defendant, Defendant refused to exercise one of many available avenues to contract around the court providing price, and because Defendant lacks any legal basis to collect the arbitrary and exorbitant amounts it is asking Plaintiff and the class to pay.

INTRODUCTION

2. Plaintiff brings this proposed class action on behalf of herself and all other similarly situated person charged by Defendant for the transportation of patients to hospitals in the Southwest, including the States of Arizona (location of its headquarters), California, New Mexico and Texas and also in the upper Midwest and

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1 even east-coast states. See Defendant's service map at
2 <http://phiairmedical.com/where-we-are/national-map.html>. For individuals like
3 Plaintiff, first responders or other emergency personnel generally determine whether a
4 patient needs emergency helicopter transport to the hospital. The transportation is
5 generally arranged, and patients are transported, without their knowledge or express or
6 informed consent, or under the duress of life-threatening or other serious medical
7 conditions that require immediate treatment at a hospital. Given the dire
8 circumstances, express or informed consent or negotiation of essential terms is
9 typically impossible because the patient is either unconscious or otherwise incapable of
10 giving meaningful express or informed consent.

11 3. There are no express contracts for the payment of the prices charged for
12 the transportation between Plaintiff, the Class, and the Defendant. Defendant did not
13 inform either Plaintiff or the class regarding the price of the transportation, and no
14 express agreement exists to pay the arbitrary price subsequently charged by the
15 Defendant. Defendant does not even provide constructive notice of the price by way of
16 publication of its fee schedule on its web site or otherwise. Its prices are only
17 disclosed after-the-fact.

18 4. After the transportation is complete Defendant sends a statement for the
19 transportation showing a "base rate" and a "mileage" charge (collectively "charged
20 amount") and demands payment from the Plaintiff and the Class. The rate that will be
21 charged by Defendant for the "base charge" and "mileage" is known to Defendant
22 prior the transportation, but it is not published on their web site or otherwise disclosed
23 to Plaintiff and the Class. Even in instances where a family member, or even less
24 frequently, a coherent patient themselves, signs a document with Defendant before a
25 transport, that document does not disclose the prices to be charged. Therefore, there is
26 not a material difference between express and implied contractual relations between
27 Defendant and the class, because in both contexts, the Court is agreed to set the price.
28

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1 5. The Class will include the patient transported, the legal custodian of the
2 patient (in the case of spouses or minor or mentally disabled patients), the estate of a
3 deceased patient, or any person or entity from whom Defendant has demanded
4 payment for helicopter ambulance transport of themselves or another.

5 6. The price comprising the charged amount was not disclosed to the
6 Plaintiff or the Class by Defendant, nor is the price charged agreed to or negotiated by
7 the Defendant and the persons charged prior to transportation of the patient. As such
8 Defendant's express undertaking is to submit to a court the question of the proper
9 amount to be charged for any services provided.

10 7. In this action, Plaintiff, on behalf of herself and the Class, seeks a
11 declaration with respect to Plaintiff's and the Class's legal obligation, if any, with
12 respect to payment to Defendant of the prices charged for the transportation services
13 provided and for the Court to determine the unspecified price term.

14 8. The ADA, 49 U.S.C. § 41713(b)(1) provides:

15 [A] State, political subdivision of a State...may not enact or enforce a
16 law, regulation, or other provision having the force and effect of law
17 related to a price, route, or service of an air carrier that may provide air
transportation under this subpart.

18 9. The text of the ADA reveals that Defendant is not a "common carrier,"
19 which is a prerequisite to being an "air carrier." An "air carrier" provides "air
20 transportation" which means "transportation of passengers...as a *common carrier* for
21 compensation." 49 USC §40102(a). A "common carrier" is defined as "any carrier
22 required by law to convey passengers...without refusal if approved fare or charge is
23 paid in contrast to private or contract carrier." BLACK'S LAW DICTIONARY (emphasis
24 added). Irregular routes indicate that a carrier is not a "common carrier." The
25 definition from BLACKS was cited with approval in a D.C. Circuit opinion interpreting
26 the term "common carrier," and the case also cited the presumption set by the Supreme
27 Court of "following the common law usage where Congress has employed a term with
28 a well-settled common law meaning." *CSI Aviation Servs v. United States DOT*, 637

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1 F.3d 408, 415 (D.C. Cir. 2011) (finding that the company in that case was not an “air
 2 carrier” because they did not meet the definition of a “common carrier”). The absence
 3 of “approved fares or charges,” in fact even publicly disclosed prices, and the absence
 4 of regular routes with fixed end points, make clear that Defendant is not a “common
 5 carrier” and should thus not be deemed an “air carrier.” *Alves v. Pub. Utils. Comm’n*,
 6 260 P.2d 785, 788 (Cal. 1953) (discussing the differences between a “common carrier
 7 between fixed termini and over regular routes” and a “highway contract carrier” that
 8 does not operate between fixed termini and over regular routes); *Railroad Comm’n of*
 9 *Tex. v. Cent. Freight Lines, Inc.*, 434 S.W.2d 911, 916 (Tex. App. 1968) (discussing
 10 the differences between carriers operating over “regular routes” and between fixed
 11 termini and those on “irregular routes”).

12 10. Defendant sends a statement for the charged amount to the Plaintiff and
 13 Class and demands payments for prices that the Plaintiff and Class never agreed to pay.
 14 In the absence of payment, Defendant initiates collections, reports the amount charged
 15 as an unpaid bill to credit reporting agencies, engages in collection efforts, seeks to
 16 enforce liens, and initiates suit in state courts, or seeks to enforce state law related to
 17 the price or services they provide. Defendant demands payment, initiates collection
 18 efforts, and threatens suit in state court for judgments based upon prices never
 19 disclosed and agreed upon for the services provided by the Defendant in spite of the
 20 fact that Defendant knew, prior to the transportation, the prices they would charge.

21 11. Defendant has the option to negotiate an agreed rate with Plaintiff’s
 22 insurer and the insurers of the class. However, Defendant has refused to enter such
 23 negotiations preferring, instead, to submit the price under its agreement to
 24 determination by the Court.

25 12. Defendant has found it makes more money by refusing to negotiate and
 26 instead attempting to impose its excessive prices on Plaintiff and others similarly
 27 situated after the fact. The Tenth Circuit described the situation thus: “Unscrupulous
 28 pricing behaviors that would not be sustainable in a true free market...are easily

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1 perpetuated in the warped market of air-ambulance service.” *Eaglemed, LLC v. Cox*,
2 868 F.3d 893, 903 (10th Cir. 2017).

3 13. The type of preliminary approach advanced by Plaintiff is illustrated by
4 an order from *Wagner v. Summit Air Amb. & Reach Air Med*, 2017 U.S. Dist. LEXIS
5 177709, 2017 WL 4855391 (D. Mont. Oct. 26, 2017), refusing to dismiss a complaint
6 asserting claims like Plaintiff herein asserts. The referenced *Wagner* order is attached
7 as Exhibit 8. *Wagner* found that the defendant air ambulance companies in that case
8 “knowingly incorporated a consideration term of ‘reasonable worth’ by their self-
9 imposed and voluntary undertaking to omit a specific consideration term.” Plaintiff
10 intends to and does assert the same type of claims herein as those asserted in *Wagner*.

11 PARTIES

12 14. Plaintiff Christina C. Wray is a citizen of the State of Oklahoma who
13 was, at the time of her transport by Defendant, on vacation in New Mexico.

14 15. Defendant Phi Air Medical, L.L.C. is incorporated under the laws of
15 Louisiana with a principal place of business located at 2800 N. 44th Street, Suite 800,
16 Phoenix, Arizona 85008, with its Arizona registered agent, CT Corporation System,
17 3800 N. Central Ave., Suite 460, Phoenix, Arizona 85012. Defendant claims it “safely
18 transport[s] more than 30,000 patients each year, operating out of more than 65 bases
19 across the United States.” <http://www.iflyphi.com/who-we-are/phi-air-medical.html>
20 Defendant’s practices and policies referenced herein emanate from its corporate
21 headquarters in Arizona.

22 JURISDICTION AND VENUE

23 16. This Court has original jurisdiction pursuant to 28 U.S.C § 1331.
24 Further, the amount in controversy, exclusive of interest and costs, exceeds the
25 sum or value of \$5,000,000.00 and is a class action in which Plaintiff and
26 members of the Class are citizens of states different from Defendant.

27 17. This Court has personal jurisdiction over Defendant because it is
28 authorized to do business and is conducting business throughout the United States,

1 including Arizona; it has sufficient minimum contacts with the various states of
2 the United States, and the State of Arizona; and/or sufficiently avails itself of the
3 markets of the various states of the United States, including Arizona, to render
4 proper the exercise of jurisdiction by this Court.

5 18. Venue is proper in this district under 28 U.S.C. § 1391(b)(1) because
6 Defendant maintains its headquarters in this District and is subject to personal
7 jurisdiction in this District, and has consented to venue in this District.

8 19. Venue is also proper because: (a) Defendant is authorized to conduct
9 business in this District and has intentionally availed itself of the laws and markets
10 within this District; (b) does substantial business in this District; and (c) is subject to
11 personal jurisdiction in this District.

12 FACTS

13 20. On December 20, 2015 Plaintiff was on vacation near Taos, New
14 Mexico. The heater in the house Plaintiff was staying in malfunctioned, exposing
15 Plaintiff to excessive carbon monoxide, which presented a risk to Plaintiff and her
16 unborn baby. She was transported by helicopter from Holy Cross Hospital in Taos,
17 New Mexico to Presbyterian Hospital in Albuquerque, New Mexico. After Plaintiff's
18 transport, she initiated a personal injury claim against the homeowner, which claim
19 was ultimately paid by the homeowner's insurer.

20 21. No express oral or written contract was agreed to between Plaintiff and
21 Defendant regarding the price Defendant would charge for Plaintiff's transportation,
22 and Defendant did not state the price it charged for its services. Nor did Plaintiff agree
23 to any express price or other consideration to be paid by Plaintiff to Defendant
24 for transportation. Instead, Defendant transported Plaintiff without any agreement
25 regarding the price Defendant would charge for that transportation. Defendant's
26 voluntary undertaking was a transportation of Plaintiff without any knowledge of the
27 exact price to be assessed, so Defendant undertook to transport Plaintiff for a price to
28 be set by the Court.

1 22. Following the transport, Defendant billed Plaintiff a total of \$57,374.00
2 including a \$25,678.00 “Base Rate,” along with an additional \$31,696.00 for 127 miles
3 of transport at \$283.00 per mile. *See* Exhibit 1, January 12, 2016 Statement. No
4 disclosure was given to Plaintiff of the charges that would be assessed for the
5 transportation.

6 23. The Defendant’s statement was submitted by Defendant to Plaintiff’s
7 third-party health insurance through BlueCross BlueShield of Texas (“BCBS”), which
8 paid \$3,951.55 toward the “base rate” and \$2,869.02 toward the mileage for a total
9 allowed amount of \$6,820.57. After Plaintiff’s deductible and coinsurance amounts, a
10 \$5,157.32 payment was made by BCBS to Defendant. *See* Exhibit 2, June 3, 2016
11 explanation of benefits (“EOB”).

12 24. On April 13, 2016 Defendant billed Plaintiff \$57,374.00, the charged
13 amount, and demanded payment, asking Plaintiff to sign over the insurance check and
14 send a check for the balance, comprising payment of the full charged amount. *See*
15 Exhibit 3, letter from “Tanishya K” at Defendant’s Patient Financial Services.
16 Defendant stated that “payment is expected within 10 days after receipt of this notice.”

17 25. On November 22, 2016, Defendant wrote to Plaintiff’s attorney in her
18 personal injury case offering a \$15,665.00 discount, making the amount due
19 \$36,551.68 if payment was received within 30 days of the letter. After 30 days, the
20 offer was “null and void and the balance will be due in full.” *See* Exhibit 4, letter from
21 “Gretchen Mc.” with Defendant’s Patient Financial Services division. By this time,
22 Plaintiff had paid the BCBS payment over to Defendant, so this letter referenced the
23 full amount due, before the offered discount, of \$52,216.68, which is \$5,157.32 less
24 than the \$57,374.00 originally-billed amount.

25 26. Plaintiff’s personal-injury attorney wrote to Defendant several times
26 thereafter and also talked to its representatives on the phone several times. *See* Exhibit
27 5, December 14 and December 19, 2016 letters from Plaintiff’s personal-injury
28 attorney, Gary Homsey. Plaintiff offered Defendant a total \$12,000.00 as payment-in-

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1 full of Defendant's charges, which included BCBS's payment and an additional
2 \$6,842.68 from Plaintiff. Later, per a December 19, 2016 phone call, Plaintiff's lawyer
3 noted that Defendant had rejected Plaintiff's counteroffer.

4 27. On December 19, 2016, Defendant wrote to Plaintiff's personal-injury
5 attorney offering the \$15,665 discount for an additional 10 days. This offer meant that
6 the discount, which would have expired on December 22 would remain open through
7 December 29 – a 10-day extension. This letter was a confirmation of what Plaintiff's
8 attorney stated in his letter of December 19 – that Defendant rejected Plaintiff's
9 counteroffer and refused to better their settlement offer.

10 28. Defendant wrote to Plaintiff's personal-injury attorney again on
11 December 27, 2016 renewing the \$36,551.68 settlement offer for an additional seven
12 days. *See* Exhibit 6, letter from Jennifer Lytle, a Strategic Operations Specialist with
13 Defendant's Patient Financial Services division in its Phoenix, Arizona headquarters.
14 Defendant sought certain "required" information to submit Plaintiff's request to its
15 board for a second time seeking an additional discount. If Plaintiff failed or refused to
16 comply with Defendant's request for very detailed information about Plaintiff's
17 personal injury case and other medical providers, then the settlement offer would
18 become "null and void and the balance will be due in full."

19 29. Defendant next wrote Plaintiff on January 11, 2017 indicating that
20 Plaintiff's personal-injury attorney was "no longer cooperating" with Defendant, so the
21 full balance on the account was due. *See* Exhibit 7, letter from Jennifer Lytle. If the
22 balance was not received within 15 days, Defendant stated its intent to refer the matter
23 to Bonneville Collections.

24 30. On information and belief, Defendant has filed multiple state-court
25 breach-of-contract suits in multiple states to collect their charges, both by direct actions
26 against a transported person and by way of making claims in interpleader actions.
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1 31. On information and belief, Defendant has filed proof of claims in
2 multiple bankruptcy cases asserting a right to be paid based on state-law breach-of-
3 contract theories.

4 32. On information and belief, Defendant has filed claims in estate cases to
5 recover their charges for transportation of a deceased person in multiple cases.

6 33. On information and belief, Defendant has sought more compensation
7 from Medicare, Medicaid and Tricare insureds than is allowed under the relevant
8 payment schedule for providers that accept assignment of benefits from Medicare,
9 Medicaid and Tricare patients.

10 34. On information and belief, Defendant has sought more compensation
11 from patients with commercial insurance, employer-sponsored health benefits plans,
12 and other non-governmental third-party payers than what the insurance industry has
13 determined to be the uniform, customary, and reasonable rate in each locality.

14 35. On information and belief, Defendant has compelled class members to
15 enter into contracts to pay their full billed amount in monthly installments paid over
16 decades with interest.

17 36. On information and belief, Defendant has enforced, or sought to enforce,
18 subrogation claims or liens against personal injury claims or recoveries seeking their
19 full billed amounts.

20 37. Defendant's collection efforts against Plaintiff were ongoing at the time
21 this action was filed, and Defendants will continue efforts to collect their improperly-
22 billed amounts in the absence of relief granted by the Court in this action. There is a
23 live and ongoing dispute between Plaintiff and Defendant.

24 **Constitutional Issues**

25 38. First, Plaintiff notes that there is a straightforward legal path to address
26 this dispute in the context of an agreement undertaken by the parties with the
27 understanding that the Court would set the price term, so it is unnecessary to even
28 reach the difficult constitutional problems presented by the positions previously taken

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1 by air ambulance companies. However, since the issues have been reached in prior
2 cases, the following constitutional claims are asserted in the alternative.

3 39. The legal position of air ambulance companies in prior cases has been
4 simple: under the Airline Deregulation Act, 49 U.S.C. § 41713(b)(1) (“ADA”), air
5 ambulance companies claim they are vested by the ADA with plenary power to set
6 whatever price they choose for transportation of patients in extremis who have no
7 opportunity to decide whether they want or need transportation, and this Court, and all
8 other courts, are powerless to decide issues related to the arbitrary and inflated prices
9 imposed after-the-fact by Defendant.

10 40. Plaintiff’s position can also be simply stated: the air ambulance
11 companies’ assertion cannot be right about what the law is. It is fundamentally unfair,
12 and shocking to the conscience, that persons who are transported while gravely injured
13 by a company called to respond without their knowledge or express or informed
14 consent can be charged whatever price Defendant chooses, and there is zero
15 opportunity for Plaintiff to challenge Defendant’s purported plenary power. Even
16 actions by the other branches of the federal government are subject to judicial review,
17 and it is beyond the pale to assert that Defendant’s undisclosed prices are not.

18 41. **Seventh Amendment – Right to Jury Trial.** Air ambulance companies
19 have previously asserted that they have the right to seek compensation from their
20 clients based on various state law theories including, but not limited to, express or
21 implied state law contract, but amazingly then asserted that courts have no right to
22 question the air ambulance company’s arbitrarily-billed charges.

23 [Court]: Your company can bill what it wants and collect based
24 on...some...state law theory, but...[transported patients] can’t challenge
the bill under that same theory.

25 [Counsel for Air Methods]: That is the nature of ADA preemption under
26 the law as it’s written now.

27 [Court]: That’s crazy.
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1 Trans. of Sept. 27, 2017 hearing in *Scarlett et al. v. Air Methods Corp.* (D. Colo. Case
2 No. 16-CIV-2723-RBJ) (the affiliated companies of Air Methods and Rocky Mountain
3 comprise the nation’s largest air ambulance company).

4 42. The *Wagner* court found that a “circular logic permeates these
5 arguments” made by air ambulance companies. Exhibit 8 at pp. 5-6 (*Wagner* order).

6 43. If Defendant asserts the same one-way-agreement argument advanced by
7 its peers, such a legal situation would violate Plaintiff’s and the class’s Seventh
8 Amendment right to a jury. “No question that a breach of contract seeking money
9 damages was triable at law in 1791” so a party joined in such an action would be
10 entitled to a jury. *Gangitano v. NN Inv’rs Life Ins.*, 773 F. Supp. 342, 343-44 (S.D.
11 Fla. 1990); *see also OHC Liquidation Trust v. Credit Suisse*, 378 B.R. 59 (D. Del.
12 Bankr. 2007) (claims seeking “money damages for breach of express or implied
13 contracts are clearly legal”) (quoting from *Donovan v. Robbins*, 579 F. Supp. 817, 822
14 (N.D. Ill. 1984)). “As a general rule, monetary relief is legal...and that claims...[have]
15 a right to trial by jury.” *Control Ctr, LLC v. Lauer*, 288 B.R. 269, 278 (M.D. Fla.
16 2002) (*citing Feltner v. Colum. Pict. Tele., Inc.*, 523 U.S. 340, 352 (1988)).

17 44. **Fifth Amendment – Due Process.** The Fifth Amendment to the United
18 States Constitution provides that “no person shall be deprived of ... property without
19 due process of law.” Plaintiff’s constitutional rights under the foregoing provision are
20 denied by the ADA as applied in these circumstances.

21 45. Given existing precedent, Plaintiff asks the Court to declare the ADA
22 unconstitutional as applied to air ambulance transport providers such as Defendant.

23 46. If the ADA preempts Plaintiff’s state common law breach of contract
24 claims in the absence of a written agreement or mutual assent (despite Defendant’s
25 unilateral undertaking to provide air medical transportation), and the federal common
26 law of contracts does not supply a means by which Plaintiff may challenge the
27 reasonableness of Defendant’s unilateral price, Plaintiff has no procedural mechanism
28 or remedy at law to address a deprivation of her personal property.

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1 47. Under such a scenario Plaintiff’s right to procedural due process is
2 denied because no prior notice of Defendant’s pricing is afforded, no opportunity to
3 accept or negotiate such a term is afforded, and ultimately no opportunity to contest
4 Defendant’s unilateral price term is afforded. There is no process whatsoever.

5 48. Under existing precedent and Defendant’s expected position on this
6 issue, neither the Court nor Plaintiff has the ability to challenge or declare rights
7 related to the price term imposed by Defendant.

8 49. As a result, the ADA is unconstitutional as applied to Plaintiff and the
9 class as it denies them any method by which to challenge and be heard on this issue,
10 imposing financial hardship upon them with no recourse.

11 50. Plaintiff’s rights to substantive due process are also denied as the ADA is
12 applied to air ambulance transport providers and it is directly contrary to the stated
13 intent of the ADA.

14 51. Congress did not intend the result Defendant seeks (absolute power to
15 charge whatever they want). If the ADA applies to give non-traditional air carriers
16 such as air ambulance transport providers unchecked discretion to charge whatever it
17 wants for services provided under duress and with no competition it is an unintended
18 consequence of a bill that had decreasing prices and increasing competition as its goal.

19 52. The ADA was implemented in 1978 so that market forces, as opposed to
20 state laws, could press efficiency, innovation, and low prices for consumers. In a
21 message to Congress dated March 4, 1977, President Jimmy Carter urged a reduction
22 in the regulations imposed on the airline industry so that consumers may benefit from
23 significantly lower prices, competitors may enter the market, and air carriers may alter
24 their routes without prior governmental approval. *See* Airline Industry Regulation,
25 Message from Pres. Carter to the Congress, March 4, 1977. Recognizing that
26 deregulation of the airline industry would be a significant feat, President Carter closed
27 his message by reminding Congress that “we must take care to protect the legitimate
28 interests of the public.” *Id.* The purpose of the ADA was competition and lower

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1 prices. At the time of signing, President Carter identified two critical objectives of the
 2 ADA: first, to fight inflation, and second, “to ensure American citizens of an
 3 opportunity for low-priced air transportation.” Airline Deregulation Act of 1978
 4 Remarks on Signing S. 2493 into Law, October 24, 1978. Neither of those objectives
 5 is served if the ADA applies to foreclose any challenge to an air ambulance transport
 6 provider’s unilateral price setting in a competition-free, medically necessary
 7 environment.

8 53. Other air ambulance companies have argued that air ambulance
 9 passengers are not without a process, they can present their claims to the Department
 10 of Transportation (“DOT”). The idea that DOT can effectively regulate prices for the
 11 500,000-plus annual air ambulance transports is contrary to the basic proposition of the
 12 ADA: getting the federal government out of the business of regulating prices on routes.
 13 Further, the Supreme Court in *Wolens* held that DOT has “*neither the authority nor*
 14 *the apparatus* required to superintend a contract resolution regime.” *Am. Airlines v.*
 15 *Wolens*, 513 U.S. 219, 232 (1995) (emphasis added) (emphasizing that DOT’s role was
 16 ensuring accurate disclosure, which is not relevant here because air ambulance
 17 companies make no disclosures at all).

18 54. Given the foregoing, the ADA’s preemption provision, as applied to the
 19 emergency air ambulance context, operates to unconstitutionally deny Plaintiff
 20 procedural and, alternatively, substantive due process rights.

21 CLASS ACTION ALLEGATIONS

22 55. This action is brought and may be maintained as a class action pursuant
 23 to Fed. R. Civ. P. 23. The requirements of Fed. R. Civ. P. 23(a), (b)(1), (b)(2) and
 24 (b)(3) are met with respect to the Class defined as follows:

25 All persons billed by Defendant, or who paid a bill from Defendant, for
 26 air medical transport that Defendant carried out from a location in the
 27 United States without an express contract term, prior to transport, setting
 28 the specific mileage and base rate charges.

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Excluded from the Class are Defendant, any entity in which Defendant has a controlling interest or which have a controlling interest of Defendant, and Defendant’s legal representatives, assigns and successors. Also excluded are the judge to whom this case is assigned and any member of the judge’s immediate family.

56. Plaintiff reserves the right to redefine the Class prior to class certification.

57. The members of the Class are so numerous that joinder of all members is impracticable. The exact number of Class Members is unknown as such information is in the exclusive control of Defendant. However, due to the nature of the trade and commerce involved, Plaintiff believes the Proposed Class consists of thousands of Class Members. Defendant itself claims that it transports “more than 30,000 patients each year, operating out of more than 65 bases across the United States.” <http://www.iflyphi.com/who-we-are/phi-air-medical.html>.

58. Common questions of law and fact affect the rights of each Class Member and a common relief by way of declaratory judgment and injunction, including at least the following:

- a. Did the Defendant and Plaintiff have an agreement for Plaintiff to pay a price determined by the Court for Defendant’s patient transportation services?
- b. Did the Defendant have a fixed mileage price and “helicopter rotor base” price for the transportation before Plaintiff and Class Members were transported?
- c. Did Defendant communicate their fixed mileage price and “helicopter rotor base” price for the transportation to Plaintiff and the Class, actually or constructively, before the patients were transported?
- d. Did Defendant demand payment of a fixed mileage price and “helicopter rotor base” price for the transportation of patients when the mileage and helicopter rotor base prices sought had not been expressly agreed to by Plaintiff and the Class?
- e. What voluntary undertakings did Defendant accept regarding transportation of Plaintiff and the Class?

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- 1 f. Is there any basis for Defendant to recover its billed fees other than via
- 2 state law claims for implied or express (if a writing is signed) contract?
- 3 g. Whether Defendant could contract around the Court supplying the price
- 4 by i) publicly disclosing its prices, for example on its web site;
- 5 ii) disclosing pricing on its written contracts; or iii) negotiating with
- 6 Plaintiff's and the class' insurers on an agreed rate?
- 7 h. Whether Defendant undertook an agreement with the knowledge that the
- 8 absence of an express price term necessarily required the Court to
- 9 provide a price?
- 10 i. Whether the Court should grant injunctive relief to Plaintiff and the Class
- 11 to prevent the all further collection efforts by the Defendant?
- 12 j. If Defendant asserts the same arguments advanced by other air
- 13 ambulance companies in previous cases, whether the positions asserted
- 14 by Defendant violate Plaintiff's and the Class's right to a jury trial under
- 15 the Seventh Amendment or deny them Due Process.

16 59. The claims and defenses of the named Plaintiff are typical of the
17 claims and defenses of the Class. Defendant has sought to impose undisclosed,
18 arbitrary prices by Defendant for transportation mileage and "helicopter rotor base" in
19 violation of the parties' agreement for the Court to provide the price term.

20 60. The named Plaintiff will fairly and adequately assert and protect the
21 interests of the Class. Specifically, she has hired attorneys who are experienced in
22 prosecuting class action claims and will adequately represent the interests of the
23 Class. Neither the named Plaintiff nor Class Counsel have a conflict of interest that
24 will interfere with the maintenance of this class action.

25 61. A class action provides a fair and efficient method for the
26 adjudication of this controversy for the following reasons:

- 27 a. The common questions of law and fact set forth herein predominate
- 28 over any questions affecting only individual class members;
- b. The Class is so numerous as to make joinder impracticable but not so
- numerous as to create manageability problems;
- c. There are no unusual legal or factual issues which would create
- manageability problems;

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- d. Prosecution of separate actions by individual members of the Class would create a risk of inconsistent and varying adjudications against Defendant when confronted with incompatible standards of conduct;
- e. Adjudications with respect to individual members of the Class could, as a practical matter, be dispositive of any interest of other members not parties to such adjudications, or substantially impair their ability to protect their interests; and
- f. Defendant has acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole.

CAUSES OF ACTION

COUNT I

Breach of Contract

62. Plaintiff and the Class incorporate the paragraphs outside of this Count as though set forth herein.

63. Prior to the receipt of services, Defendant chose to engage in no disclosure or negotiation of contract terms.

64. Plaintiff and Defendant did not enter into either a written or oral agreement on the price Defendant charges for transport services.

65. Plaintiff accepts that Defendant did not provide its services gratuitously. But any agreement between them (and between Defendant and Class Members) did not mention the price to be charged for the services.

66. Prior to sending Plaintiff and members of the Class a bill, Defendant never disclosed the rates it charges for its services. As these agreements contained an undefined price term they constituted an undertaking to provide services with the understanding that the price would be a reasonable amount set by the Court.

67. Plaintiff and members of the Class, to the extent they had any understanding at the time of contracting, had a reasonable expectation that Defendant would charge a reasonable amount for its services.

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Phoenix, AZ 85004-2595

Lewis Roca
ROTHGERBER CHRISTIE

1 68. Instead of charging Plaintiff and members of the Class properly for its
2 services and materials, Defendant breached the agreement by charging inflated and
3 exorbitant prices that bear no reasonable relationship to the value of the services
4 rendered.

5 69. By any measure, the price Defendant charged Plaintiff and members of
6 the Class for services were unreasonable. These prices far exceeded the amounts paid
7 by third party payers, including the “uniform, customary, and reasonable” amount paid
8 by the health insurance companies or employer-sponsored health benefits plans and the
9 amount paid by Medicare, Medicaid and other government payers for the same
10 services.

11 70. As a result of Defendant’s breach of the agreements, Plaintiff and
12 members of the Class have been injured in the amount at least equal to the overcharges
13 levied by Defendant, and any other consequential damages flowing from the breaches.
14 Plaintiff and members of the Class are therefore entitled to restitution remedies,
15 consequential damages, pre-judgment interest and such other relief as set forth in the
16 prayer below.

17 **COUNT II**

18 **Injunctive and Declaratory Relief**

19 71. Plaintiff and the Class incorporate the paragraphs outside of this Count
20 as though set forth herein.

21 72. 28 U.S.C §2201 provides as follows:

22 In a case of actual controversy within its jurisdiction...any court of the
23 United States, upon the filing of an appropriate pleading, may declare the
24 rights and other legal relations of any interested party seeking such
25 declaration, whether or not further relief is or could be sought. Any such
26 declaration shall have the force and effect of a final judgment or decree
27 and shall be reviewable as such.

28 73. Prior to the provision of services, no negotiation of contract terms
regarding the price of Defendant’s transportation services took place and Plaintiff, the

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1 Class and Defendant did not enter into an express agreement on the price Defendant
2 would charge, and the Plaintiff/Class would pay for transport services.

3 74. In all instances, Defendant seeks assistance from the Plaintiff and the
4 Class to obtain third-party payment for the charged amounts.

5 75. If there is no third-party payment or that payment is less than the charged
6 amounts, Defendant demands payment (“balance bills”), threatens adverse
7 consequences, and initiates detrimental collection efforts against Plaintiff and the
8 Class.

9 76. In the event Plaintiff and the Class do not pay Defendant the charged
10 amounts, Defendant threatens collection, reports the unpaid charged amount as bad
11 debt to credit reporting agencies, accrues interest and fees, and ultimately may file suit
12 in state court or claims in bankruptcy for the amounts charged to coerce Plaintiff and
13 the Class to make payments that they do not owe, and Defendant cannot legally collect.

14 77. Plaintiff and the Class seek injunctive and declaratory relief for the
15 purposes of determining questions of actual controversy between the Plaintiff, the
16 Class and Defendant. The exhibits to this Complaint show Defendant’s extensive
17 efforts to collect their alleged debt from Plaintiff, and Defendant has expressed an
18 intent to engage in ongoing collection efforts.

19 78. Defendant has acted in a uniform manner in failing to disclose and
20 negotiate the price it would charge for transportation services before rendering
21 services, balance billing the Plaintiff and the Class in the event the charged amounts
22 are not paid, and engaging in collection efforts, including litigation.

23 79. Defendant has acted or refused to act on grounds that apply generally to
24 Plaintiff and the Class such that declaratory relief to determine whether Defendant and
25 Plaintiff, and the Class, have an enforceable agreement, the enforcement of which is
26 not preempted by the ADA, so that final injunctive relief or corresponding declaratory
27 relief is appropriate respecting the Class as a whole within the meaning of Fed. R. Civ.
28 P. 23.

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Phoenix, AZ 85004-2595

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1 80. Defendant has demanded payment of the charged amounts from the
2 Plaintiff and the Class, and have threatened or initiated collection efforts against the
3 Plaintiff and the Class.

4 81. There is an actual dispute and controversy between Plaintiff and the
5 Class, and Defendant as to whether Defendant can demand payment for services
6 concerning which no express price was agreed, can engage in collection efforts where
7 no legally enforceable contract exists, can impose interest and costs of collection on
8 Plaintiff and the Class, and whether any attempt by Defendant to collect the amounts
9 charged under the circumstances is prohibited by the preemption provisions of the
10 ADA.

11 82. Plaintiff and the Class have no adequate remedy at law.

12 83. Plaintiff seeks declarations to determine the rights of the Class Members,
13 in particular:

14 a. The Court finds that Defendant chose not to enter into any express and
15 informed contract for Plaintiff and the Class to disclose prices charged by
16 the Defendant for the transportation services it provided;

17 b. If the Court finds the parties did not voluntarily undertake to have the
18 Court set the price, then the Court should find the ADA, 49 U.S.C.
19 § 41713, preempts Defendant from seeking judicial enforcement or
20 judgment against Plaintiff and the Class where Defendant and the
21 Plaintiff, and the Class, did not agree to pay the prices charged prior to
22 the transportation of patients because such action by a court would
23 impose terms on the parties that they did not voluntarily undertake;

24 c. The Court finds that Defendant has no legal enforceable right to collect
25 the prices charged in court proceedings, or other collection efforts, and
26 Plaintiff and the Class, have no obligation to pay Defendant the prices
27 charged.

28 d. If Defendant asserts the same arguments advanced by other air
ambulance companies in previous cases, the Court finds that the
positions asserted by Defendant violate Plaintiff's and the Class's right to
a jury trial under the Seventh Amendment and/or deny them
Due Process.

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1 84. Plaintiffs and the Class further seek a prospective order from the Court
2 requiring Defendants to: (1) cease charging for the transporting of patients without an
3 express agreement or full disclosure as to the rates for mileage and helicopter rotor
4 base; and (2) to cease Defendant’s attempts to collect outstanding bills for which no
5 agreement as to price exists from Plaintiff and the Members of the Proposed Class,
6 except at a price that Defendant has undertaken for the Court to set.

7 85. Plaintiff and the Proposed Class seek the disgorgement by Defendant of
8 all sums collected by the Defendant from third-party payers, and the Class who have
9 paid any amounts charged by the Defendant and other relief as set forth in the prayer
10 below.

11 86. Defendant’s collection efforts damage the credit or financial health of
12 Plaintiff and the Class, cause them to incur legal fees and litigation expenses, impede
13 their ability to resolve personal injury claims, force them to consider filing or file
14 bankruptcy, and expose Plaintiff and the Class to claims for unlawful rates, interest on
15 unpaid Defendant’s charges and vexing and harassing collection efforts. As a result of
16 Defendant’s practices as described above, Plaintiff and the Class have suffered, and
17 will continue to suffer, irreparable harm and injury.

18 87. Accordingly, Plaintiff and the Class respectfully ask the Court to enter a
19 permanent injunction ordering Defendant to cease and desist their practice of charging
20 Plaintiff and the Class for transporting patients in any amount greater than the
21 reasonable amount set by the Court.

PRAYER FOR RELIEF

22
23 **THEREFORE**, Plaintiff, individually and on behalf of the Class of persons
24 described herein, pray for an Order as follows:

- 25 a) Entering an order certifying the Class (and subclasses, if applicable),
26 designating Plaintiff as the class representatives, and designating the
27 undersigned as class counsel;
- 28 b) Awarding consequential damages;

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- c) Awarding Plaintiff all costs and disbursements, including attorneys’ fees, experts’ fees, and other class action related expenses;
- d) Imposing a constructive trust, where appropriate, on amounts wrongfully collected from Plaintiff and the Class Members pending resolution of their claims herein;
- e) Issuing appropriate declaratory and injunctive relief to declare the rights of Plaintiff and the Class Members;
- f) Finding that Defendant has breached the terms of its agreement by refusing to bill and accept a price established by the Court in the absence of an express price term;
- g) Awarding pre-judgment and post-judgment interest; and
- h) Granting such further relief as the law allows and the Court deems just.

DEMAND FOR JURY TRIAL

Plaintiff and the Class hereby demand a trial by jury on all claims and issues.

DATED this 7th day of February, 2018.

LEWIS ROCA ROTHGERBER CHRISTIE
LLP

By: /s/ Steven J. Hulsman
Steven J. Hulsman
Jared L. Sutton
*Attorneys for Plaintiff Christina C. Wray, on
behalf of herself and all other similarly
situated*

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Phoenix, AZ 85004-2595
Lewis Roca
ROTHGERBER CHRISTIE

EXHIBIT 1



PO Box 731884
Dallas, TX 75373-1884

Statement

Billing Date:	Account No.:
01/12/2016	228990
Account Balance	Payment Plan Due Amount
\$ 57374.00	\$.00

Bill To Patient
Christina C Wray 2505 Lakewood Dr Chickasha OK 73018-6151 United States

Make Checks Payable To:
PHI Air Medical PO Box 731884 Dallas TX 75373-1884
Customer Service: 1-800-421-6111

Date of Service	Description	Units	Charge	Paid	Adjustments	Balance
12/20/15	Patient:Christina C Wray BASE RATE	1	25678.00			25678.00
12/20/15	Patient:Christina C Wray Rotor Wing Mileage Charge	112	31696.00			31696.00

Notes to Patient:

Please remit payment with stub below

Send Payment to:
PHI Air Medical PO Box 731884 Dallas TX 75373-1884

Amount Currently Due from Patient	Amount Enclosed:
\$.00	\$

Account Number:	Payment Plan Due Amount
228990	\$.00

Payment Type: Check Credit Card
 Card Type: Visa MC Amex Dsc
 Card Number _____
 Expiration Date: ____/____
 Billing Zip Code: _____
 Card Holder Signature: _____
 Card Holder Name: _____



Charge Sheet Report

Record Num	64-15-27893A
Date of Service	Dec 20, 2015
Patient Name	CHRISTINA WRAY
Base Name	ABQ
Send Location	Holy Cross Hospital-Taos
Send Location Address	1397 Weimer Rd
	Taos NM, 875716253
Rec Location	Presbyterian DT-Albuquerque
Rec Location Address	1100 Central Ave SE
	Albuquerque NM, 871064930
Total Charges	\$57,374.00

#	Type	Item Name	Item Num	HCPCS	Tier [Threshold]	Qty	Price	Ext
1	BaseRate	Base Rate - Air Rotor	N/A	A0431	1 [0]	1	\$25,678.00	\$25,678.00
2	Primary Miles	Primary Miles - Air Rotor	N/A	A0436	1 [0]	112	\$283.00	\$31,696.00
3	Secondary Miles	Secondary Miles - Air Rotor	N/A		1 [0]	127	\$0.00	\$0.00

EXHIBIT 2



**BlueCross BlueShield
of Texas**

P.O. Box 660044
Dallas, Texas 75266-0044

025750845922044000006999936

THIS IS A DUPLICATE.
Explanation of Benefits (EOB). **This is not a bill.**
FLOTEK INDUSTRIES
06-03-16

**CHRISTINA C WRAY
2505 LAKEWOOD DR
CHICKASHA OK 73018-6151**

Customer Service: 1-800-521-2227

****THE IMPORTANT UPDATE SECTION IS NOT
APPLICABLE TO ALL POLICIES OR PLANS****

Claim Information
Member Name: CHRISTINA C WRAY
Group No.: 25750
Identification No.: ZGP845922044
Claim No.: 612760342V30H
Patient Name: CHRISTINA C WRAY

SUMMARY

Total Billed: \$57374.00
Total Benefits Approved: \$5157.32
Amount You May Owe Provider: \$52216.68

SERVICE INFORMATION

	Service Date	Amount Billed	Not Covered	Covered
PHI AIR MEDICAL LLC				
Provider Patient Account No.: 000228990PHI				
Air Ambulance	12-20-15	25678.00	21726.45 (1)	3951.55
Air Ambulance	12-20-15	31696.00	28826.98 (1)	2869.02
Totals		\$57374.00	\$50553.43	\$6820.57

COVERAGE INFORMATION

Totals	\$57374.00	\$50553.43	\$6820.57
Deductions			
Applied to 2015 Health Care Plan Deductible		373.93	
Your Coinsurance Amount		1289.32	
Total Deductions			-\$1663.25
Total Benefits Approved			\$5157.32
Amount You May Owe Provider			\$52216.68
Payment of \$5,157.32 was made to CHRISTINA C WRAY on 06-03-16 check number 06999936.			

Information About Out-Of-Pocket Expenses

Patient: CHRISTINA C WRAY
Benefit Period: 01-01-15 Through 12-31-15

To date this patient has met \$500.00 of her/his \$500.00 Health Care Plan Deductible.

Information About Out-Of-Pocket Expenses

Benefit Period: 01-01-15 Through 12-31-15

To date \$816.09 of your family Health Care Plan Deductible has been met.

Information About Amounts Not Covered

- (1) The billed amount is greater than the allowed amount for this service. Since an out-of-network provider performed the services, you are responsible for additional charges. No payment can be made above the allowed amount.

Ideas To Help Keep Health Care Affordable

Inactive lifestyles can lead to illness and chronic diseases that result in billions of dollars in health care costs each year. Just 30 minutes of moderate daily exercise can significantly improve the health of millions of Americans, and help control the rising cost of health care.

Health Care Fraud Notice

Fraud Hotline at 1-800-543-0867

Health care fraud affects us all and causes an increase in health care costs. If you suspect any person or company of defrauding or attempting to defraud Blue Cross and Blue Shield of Texas, please call us. All calls are confidential and you may report your suspicions anonymously via our toll free hotline. For more information about health care fraud, please go to www.bcbstx.com/sid.

Information About Appeals

We appreciate your business and we want you to understand our benefit determinations.

If payment of your claim has been denied in part or in full by your health care Plan, the Plan shall notify you of:

- * The specific reason for adverse determination
- * The Plan provision on which the determination is based
- * A description of any additional information necessary for the Claimant to perfect the claim and an explanation why such

Under federal law, you are entitled to a full and fair review of the denied claim. Appeals must be made in writing within 180 days from the date you receive notice that your claim has been denied. You may submit written comments, documents, records, and other information related to the claim for benefits with your appeal. You should also include any clinical documentation from your physician that would substantiate coverage of the denied

Blue Cross and Blue Shield of Texas provides administrative claims payment services only and does not assume any financial risk or obligation with respect to claims.



Information About Appeals

information is necessary

- * A description of the Plan's review procedures and applicable time limits, including a statement of the Claimant's right to bring a civil action under 502(a) of ERISA, if applicable, following an adverse determination of review

The following conditions apply in the case of an adverse benefit determination by a group health Plan or a Plan providing disability benefits:

- * If an internal rule, guideline, protocol or other criterion was used in making the determination, the notification must state that the criterion was relied on in making the determination and that a copy will be provided free of charge upon request.
- * If based on medical necessity, experimental treatment or similar exclusion, either an explanation of such exclusion applying the terms of the Plan to the Claimant's medical circumstances or a statement that such explanation will be provided free of charge upon request.

If you are not satisfied with the determination, please contact the Blue Cross and Blue Shield of Texas (BCBSTX) Claim Review Section, P.O. Box 660044, Dallas, Texas 75266-0044. If, after investigation, BCBSTX determines that the claim (or portion of a claim) was correctly denied, you may appeal the denial as detailed here.

claim.

You will receive a written decision within 60 days of receipt of your appeal request.

Upon request and free of charge, you or your representative may at any time during regular business hours review our claim file and all documents, records and other information relevant to your claim at our office, including:

- * Information relied upon in making the benefit determination
- * Information submitted, considered or generated in the course of making the benefit determination, whether or not it was relied upon in making the benefit determination
- * Descriptions of the administrative processes and safeguards used in making the benefit determination
- * Records of any independent reviews conducted by the Plan
- * Medical judgements, including determinations about whether a particular service is experimental, investigational or not medically necessary or appropriate
- * Expert advice and consultation obtained by the Plan in connection with your denied claim, whether or not the advice was relied upon in making the benefit determination

NOTICE: "ALTHOUGH HEALTH CARE SERVICES MAY BE OR HAVE BEEN PROVIDED TO YOU AT A HEALTH CARE FACILITY THAT IS A MEMBER OF THE PROVIDER NETWORK USED BY YOUR HEALTH BENEFIT PLAN, OTHER PROFESSIONAL SERVICES MAY BE OR HAVE BEEN PROVIDED AT OR THROUGH THE FACILITY BY PHYSICIANS AND OTHER HEALTH CARE PRACTITIONERS WHO ARE NOT MEMBERS OF THAT NETWORK. YOU MAY BE RESPONSIBLE FOR PAYMENT OF ALL OR PART OF THE FEES FOR THOSE PROFESSIONAL SERVICES THAT ARE NOT PAID OR COVERED BY YOUR HEALTH BENEFIT PLAN."

IMPORTANT INFORMATION

(Retain for your records)

This document applies to you if your health coverage is not grandfathered under the Affordable Care Act (ACA). Certain plans created on or before March 23, 2010, may be "grandfathered health plans," and the external appeals and review rights set forth below do not apply to them. **You may contact us at the number on the back of your ID card to determine whether your health coverage is grandfathered.**

If we have denied your claim for benefits, in whole or in part, for a requested treatment or service, rescinded your coverage, or denied or limited your eligibility (if applicable), then this document serves as part of your notice of an adverse determination.

Contact us at the number on the back of your ID card if you need assistance understanding this notice or your adverse determination.

Your Internal Appeal Rights

What if I don't agree with this decision? You have a right to appeal an adverse determination. However, you only have 180 days from the date you receive the notice of adverse determination to file an internal appeal.

Who may file an internal appeal? You or someone you name to act for you (your authorized representative) may file an appeal. You may designate an authorized representative by completing the necessary forms. For more information on how to do so, contact us at the number on the back of your ID card.

How do I file an internal appeal? For claim appeals, you may contact us at the number on the back of your ID card and request an

IMPORTANT INFORMATION

(Retain for your records)

internal appeal or send a written request.

Oklahoma

Appeal Coordinator
Blue Cross and Blue Shield of Oklahoma
P.O. Box 3283
Tulsa, Oklahoma 74102-3283

Illinois

Claim Review Section
Health Care Service Corporation
P.O. Box 2401
Chicago, Illinois 60690

New Mexico

Appeal Unit
Blue Cross and Blue Shield of New Mexico
P.O. Box 27630
Albuquerque, New Mexico 87128-9815

Texas

Blue Cross and Blue Shield of Texas
P.O. Box 660044
Dallas, Texas 75266-0044

What about eligibility-related denials and rescissions? Please refer to your benefit booklet for additional specifics. You may also contact us at the number on the back of your ID card.

What if my situation is urgent? If your situation meets the definition of urgent under the law, your review will generally be conducted as soon as possible. An urgent situation is one in which your health may be in serious jeopardy or, in the opinion of your doctor you experience pain that cannot be adequately controlled while you wait for a decision on your appeal. If you believe your situation is urgent, you may request an expedited appeal by following the instructions above for filing an internal appeal. You may also initiate an expedited external review by an Independent Review Organization (IRO) simultaneously by contacting us at the number on the back of your ID card or contacting your state's ombudsman or consumer assistance program listed below.

Can I provide additional information about my claim? Yes, you will be informed about how to supply additional information once you initiate your appeal. You will also have the option of presenting evidence and testimony. In addition, we will provide you with any new or additional evidence, rationale, documents, or information used or relied upon in your adverse determination so you have a reasonable opportunity to respond before a final decision is made.

Can I request copies of information relevant to my claim? Yes, you may request and receive copies relevant to your claim free of charge. For example, upon request, you may receive the diagnosis and treatment codes (and their corresponding meanings) associated with an adverse determination. In addition, if we rely on a rule or guideline (such as a provision excluding certain benefits within your policy booklet) in making an adverse determination, we will provide that rule or guideline to you free of charge upon request. You can request copies of this information by contacting us at the number on the back of your ID card.

What happens next? If you appeal, we will review our decision and generally send you a written determination within 60 days of receipt of your internal appeal request. If we continue to deny the partial or full payment of a claim, coverage, or eligibility for benefits or you do not receive a timely decision, you may be able to request an External Review of your claim by an Independent Review Organization (IRO). Your health coverage may require a second level of internal appeal before you are eligible for External Review.

Once an eligible request for external review is complete, the matter will be assigned to an IRO. The assigned IRO will be an independent, unbiased, randomly selected entity that receives no financial incentives based on the outcome of any review. There will be no charge to you for the IRO review. The acknowledgment of receipt of your request from the IRO will contain additional information about their review process, the types of additional information that you can submit for review and the information that must be included in the decision of the IRO. You should note that the IRO is not bound by our adverse or final adverse determination. The decision of the IRO is binding on the parties, but there may be additional state or federal remedies available. Please refer to your benefit booklet for information.

Other Resources to Help You

For questions about your rights, this notice, or for assistance, you can contact a consumer assistance program or ombudsman.

Illinois

Illinois Department of Insurance
122 S. Michigan Ave., 19th Floor
Chicago, Illinois 60603
www.insurance.illinois.gov
Telephone: (877)527-9431
Email: DOI.Director@illinois.gov

Oklahoma

Oklahoma Insurance Department
Five Corporate Plaza
3625 NW 56th, STE 100
Oklahoma City, Oklahoma 73112
www.ok.gov/oid/Consumers/Consumer_Assistance/index.html
Telephone (in-state): (800)522-0071
Telephone (out-of-state): (405)521-2828

Texas

Texas Consumer Health Assistance Program
Texas Department of Insurance

New Mexico

Office of Superintendent of Insurance
1120 Paseo De Peralta, Room 428



**BlueCross BlueShield
of Texas**

P.O. Box 660044
Dallas, Texas 75266-0044

IMPORTANT INFORMATION

(Retain for your records)

Mail Code 111-1A, 333 Guadalupe
P.O. Box 149091
Austin, Texas 78714
www.texashealthoptions.com
Telephone: (855)839-2427
Email: chap@tdi.state.tx.us

Santa Fe, New Mexico 87501
www.OSI.state.nm.us
Telephone: (855)427-5674 or (505)827-4601
Email: mhcb.grievance@state.nm.us

You may be eligible to receive your adverse determination and this notice in a language listed below. In addition, you may call us to receive assistance in these languages.

SPANISH (Español): Para asistencia en Español, por favor llame al numero ubicado en la parte posterior de su tarjeta de identificación.

TAGALOG (Tagalog): Upang humingi ng tulong sa Tagalog, paki tawagan ang numero na nakasulat sa inyong kard.

CHINESE (中文): 如果需要中文幫助, 請撥打您卡上的電話號碼。

NAVAJO (Dine): Dinék'ehjí áka'a'doowoo ł biniiyé, t'áá shóqdi koji' hodíílnih béesh bee hane'i bi numbo bee néé ho'dólzínígíí biniiyé nanitinígíí bine'déé' bikáá'

EXHIBIT 3



04/13/16

Christina C Wray
2505 Lakewood Dr

Chickasha, OK 73018-6151

Patient: Christina C Wray
Date of Service: 12/20/15
Account#: 228990
Account Balance: \$57,374.00

Dear Christina C Wray,

We have been informed by your insurance company, BCBS NM, that your claim has been processed and payment was mailed to you on 04/05/16 for services PHI Air Medical had rendered on 12/20/15.

Please sign over the check and forward payment of \$57,374.00 and any remaining balance your insurance did not cover for the services provided to the address provided below:

**PHI Air Medical
P.O. Box 731884
Dallas, Texas 75373-1884**

Payment is expected within 10 days after receipt of this notice.

If you have any questions, please contact us at the number listed below to make payment arrangements.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tanishya K. Ext. 3020', is written over the word 'Sincerely,'.

Tanishya K. Ext. 3020
Patient Financial Services



PO Box 731884
Dallas, TX 75373-1884

Statement

Billing Date:	Account No.:
04/12/2016	228990
Account Balance	Payment Plan Due Amount
\$ 57374.00	\$.00

Bill To Patient
Christina C Wray 2505 Lakewood Dr Chickasha OK 73018-6151 United States

Make Checks Payable To:
PHI Air Medical PO Box 731884 Dallas TX 75373-1884 Customer Service: 1-800-421-6111

Date of Service	Description	Units	Charge	Paid	Adjustments	Balance
12/20/15	Patient:Christina C Wray BASE RATE	1	25678.00			25678.00
	01/15/16 BCBS-NP PMT Check			.00		
	02/01/16 Med records PMT			27.75-		
	02/01/16 SELF ADJ Medical Records				27.75	25678.00
12/20/15	Patient:Christina C Wray Rotor Wing Mileage Charge	112	31696.00			31696.00
	01/15/16 BCBS-NP PMT Check			.00		

Notes to Patient:

Your account has been billed to your insurance and awaiting a response. This is not a bill. If you have any questions call our billing office at 1-800-421-6111.

Please remit payment with stub below

Send Payment to:
PHI Air Medical PO Box 731884 Dallas TX 75373-1884

Amount Currently Due from Patient	Amount Enclosed:
\$.00	\$

Account Number:	Payment Plan Due Amount
228990	\$.00

Payment Type: Check Credit Card
 Card Type: Visa MC Amex Dsc
 Card Number _____
 Expiration Date: ____/____
 Billing Zip Code: _____
 Card Holder Signature: _____
 Card Holder Name: _____

EXHIBIT 4



11/22/16

Homsey Law Center
4816 N. Classen Blvd
OklahomaCityOK73118

Patient: Christina C Wray
Date of Service: 12/20/15
Account#: 228990
Account Balance: \$52,216.68

Dear Christina C Wray,

PHI Air Medical has agreed to give you a \$15,665.00 discount in satisfaction of the balance referenced above. Payment of \$36,551.68 must be received within 30 days from the date on this letter. If this payment is not received within the agreed time frame, this agreement becomes null and void and the balance will be due in full.

Please send your payment to:

**PHI Air Medical
P.O. Box 731884
Dallas, Texas 75373-1884**

Sincerely,


Gretchen Mc Ext 3098

Patient Financial Services

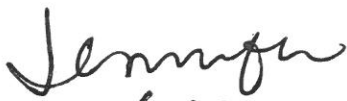

602
778
3069

EXHIBIT 5



HOMSEY LAW CENTER
"BY YOUR SIDE" - SINCE 1974

ATTORNEYS AND COUNSELORS AT LAW

Attorney:
Gary B. Homsey
gbh@homseylawcenter.com

Of Counsel:
Anthony D. DeGiusti

December 14, 2016

jlytle@phihelio.com

PHI Air Medical
PO Box 731884
Dallas, TX 75373

RE: Christina Wray
Account No.: 228990
Balance: \$52,216.68

Dear Jennifer:

This letter will be a follow up to our telephone conversation today regarding the above referenced account and our written response to Gretchen's November 22, 2016 correspondence and offer to reduce this account to \$36,551.68 that will expire on December 22, 2016.

My clients have reviewed and reject your proposal. I have been instructed by my clients to extend a counteroffer on this account in the amount of \$12,000.00. This amount includes the \$5,157.32 payment that you have previously received from Blue Cross/Blue Shield plus \$6,842.68. Blue Cross Blue Shield has sent notification to my clients of their claim for subrogation in the amount of \$5,157.32.

We would appreciate your response by Friday, December 16, 2016.

Regards,

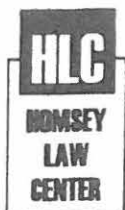
HOMSEY LAW CENTER

A handwritten signature in black ink, appearing to read 'Gary B. Homsey', written over the printed name.

Gary B. Homsey

GBH:jm

HOMSEY LAW CENTER



HOMSEY LAW CENTER

"BY YOUR SIDE" - SINCE 1974

ATTORNEYS AND COUNSELORS AT LAW

Attorney:
Gary B. Homsey
gbh@homseylawcenter.com

Of Counsel:
Anthony D. DeGiusti

December 19, 2016

jlytle@phihelico.com

PHI Air Medical

PO Box 731884

Dallas, Texas 75373

RE: Christina Wray

Account No.: 228990

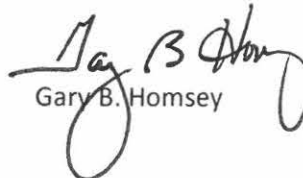
Balance: \$52,216.68

Dear Ms. Lytle:

This will confirm our telephone conversation today. After several minutes, you were unable to find your notes and rejected our counteroffer per our letter dated December 14, 2016. You stated PHI's offer is a 30% reduction. This reduction is the same as was stated in Gretchen's November 22, 2016 correspondence.

Regards,

HOMSEY LAW CENTER


Gary B. Homsey

GBH:jm

Cc: Matt Wray

HOMSEY LAW CENTER

4816 CLASSEN BLVD. • OKLAHOMA CITY, OK 73118
TELEPHONE: 405.843.9923 • FAX: 405.848.4223 • TOLL FREE: 800.845.9923
WWW.HOMSEYLAWCENTER.COM

EXHIBIT 6



BEYOND THE CALL

12/27/2016

Homsey Law Center
4816 Classen Blvd
Oklahoma City, OK 73118

Patient: Christina Wray
Date of Service: 10/14/2014
Account: 228990
Total Billed: \$52,216.68

Dear Christina Wray,

PHI Air Medical has agreed to give you a \$15,665.00 discount in satisfaction of the balance referenced above. Payment of \$36,551.68 must be received within 7 days from the date on this letter. If this payment is not received within the agreed time frame, this agreement becomes null and void and the balance will be due in full.

In order to have your request reviewed by the board a 2nd time the following information would need to be received.

Required

- Total settlement amount from all entities.
- Percentage the attorney is charging the client.
- Is the attorney taking a discount, if so what discount is being given.
- How much the attorney is trying to secure for the client.
- Total amount billed by all other providers.
 - o What their current balance due is after insurance.
 - o Amount that they are being asked discount.
 - o If the other providers have accepted the agreement or what they agreed to reduce to.

Not required but helpful

- Is the client still treating?
- How has this incident impacted the client's day to day life?
- Has the client returned back to work?
- Is there any permanent disabilities that have resulted from this incident?

Once this information is received the account can be reviewed by the board. If you are forwarding payment please forward payment to:

**PHI Air Medical
PO Box 731884
Dallas, TX 75373-1884**

If you have any questions please do not hesitate to call me directly at the number listed below.

Sincerely

Jennifer Lytle
Strategic Operations Specialist
Patient Financial Services
2800 N 44th St Ste 800
Phoenix, AZ 85008
(602) 778-3069 Direct line
(602) 381-3767 Fax

EXHIBIT 7



01/11/17

Homsey Law Center
4816 N. Classen Blvd
OklahomaCityOK73118

Patient: Christina C Wray
Date of Service: 12/20/15
Account#: 228990
Balance Due: \$52,216.68

Dear Christina C Wray,

According to our records the above patient is represented by an attorney for the above date of service. PHI agreed to accept \$36,551.68 as final payment. 12/27/16 a letter was sent to your attorney asking for more information for the possibility of a higher discount, PHI has not received a response.

Due to the fact that the attorney's office is no longer cooperating with PHI Air Medical the balance on the account is due. If you have additional information regarding the settlement of this account please contact our office immediately to avoid collections.

Please remit the balance due within 15 days from the date of this letter. If we do not receive your payment within 15 days, your account may be referred to an outside collection agency.

Bonneville Collections
PO Box 150621
Ogden, UT 84415

The collection agency will contact you once the account has been referred to them.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jennifer Lytle', is written over the word 'Sincerely,'.

Jennifer Lytle ext 3069

Patient Financial Services

cc: Christina C Wray

EXHIBIT 8

No Shepard's Signal™
As of: January 15, 2018 3:06 PM Z

Wagner v. Summit Air Ambulance, LLC

United States District Court for the District of Montana, Butte Division

October 26, 2017, Decided; October 26, 2017, Filed

CR-17-57-BU-BMM

Reporter

2017 U.S. Dist. LEXIS 177709 *; 2017 WL 4855391

STAN and RAINY WAGNER, on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, vs. SUMMIT AIR AMBULANCE, LLC, REACH AIR MEDICAL SERVICES, LLC, and DOES I-X, Defendant(s).

William J. Mattix, LEAD ATTORNEY, CROWLEY FLECK PLLP - BILLINGS, Billings, MT.

Judges: Brian Morris, United States District Judge.

Opinion by: Brian Morris

Core Terms

parties, air carrier, airline, preempts, preemption, services, contracts, covenant, billed, essential terms, transported, specify, air ambulance, patients, Air, breach of contract, district court, fair dealing, breach-of-contract, implied-in-fact, self-imposed, charges, suits, terms

Opinion

ORDER

Plaintiffs Stan and Rainy Wagner, on behalf of themselves and a proposed class of others similarly situated, filed this action in Montana's Eighteenth Judicial District Court, Gallatin County, on July 18, 2017. (Doc. 5.) Defendants Summit Air Ambulance and REACH Air Medical Services, LLC removed the case to federal court on August 18, 2017. (Doc. 1.) Defendants filed the instant Motion to Dismiss pursuant to [Rule 12\(b\)\(6\) of the Federal Rules of Civil Procedure](#) on August 25, 2017. (Doc. 2.)

Counsel: [*1] For Stan Wagner, on Behalf of Themselves and All Others Similarly Situated, Rainy Wagner, on Behalf of Themselves and All Others Similarly Situated, Plaintiffs: Daniel Patrick Buckley, LEAD ATTORNEY, BUCKLEY LAW OFFICE, Bozeman, MT; Margaret C. Weamer, Matthew J. Kelly, LEAD ATTORNEYS, TARLOW & STONECIPHER, PLLC, Bozeman, MT; Travis W. Kinzler, LEAD ATTORNEY, COK KINZLER PLLP, Bozeman, MT.

I. BACKGROUND

For Summit Air Ambulance, LLC, Reach Air Medical Services, LLC, Defendants:

Plaintiffs brought their six-year-old son, W.W., to his pediatrician on August 27,

2015, to evaluate headaches, vomiting, and unsteady gait. [*2] (Doc. 5 at 5.) Upon discovery of a brain tumor, W.W.'s doctors determined that it was medically necessary to transport W.W. by air ambulance from Bozeman, Montana to Children's Hospital in Denver, Colorado. (Doc. 5 at 5.) Bozeman Deaconess Hospital, pursuant to its preferred provider agreement with Defendants, dispatched Defendants to provide air ambulance services. (Doc. 5 at 5.)

Plaintiffs authorized Defendants to provide the air ambulance services. Defendants did not specify a price for their services. (Doc. 5 at 5.) Montana law provides that "[w]hen a contract does not determine the amount of the consideration or the method by which it is to be ascertained or when it leaves the amount thereof to the discretion of an interested party, the consideration must be so much money as the object of the contract is reasonably worth." [Mont. Code Ann. § 28-2-813](#) (2017). Further, Montana's covenant of good faith and fair dealing requires "reasonable commercial standards of fair dealing in trade." (Doc. 5 at 7.); [Mont. Code Ann. § 28-1-211](#).

Defendants billed Plaintiffs \$109,590 for one-way transport of W.W. from Bozeman, Montana to Denver, Colorado, on February 26, 2016. (Doc. 5 at 6.) This total amount reflected a "base rate" of \$15,965 and a "loaded [*3] fixed wing" charge of \$175 per mile. (Doc. 5 at 6.) Defendants multiplied the "loaded fixed wing" charge by the 535 miles between Bozeman and Denver. (Doc. 5 at 6.)

Plaintiffs' insurer paid Defendants \$22,933 of the \$109,590 bill for the flight. (Doc. 5 at 6.) Defendants sought to collect from Plaintiffs a balance of \$40,057.38 on December 29, 2016. (Doc. 5 at 6.) This balance reflects credit for the insurance payment as well as a reduced "loaded fixed wing" charge of \$81.96 per mile. (Doc. 5 at 6.) Defendants provided no explanation for the lower rate. (Doc. 5 at 6.)

Plaintiffs allege that Defendants breached the contract to provide the air ambulance services because the charges billed "exceed[] reasonable amounts typically charged in Montana for similar air-ambulance transport and the charges do not represent the reasonable worth of the services, rendered, are excessive and violate the covenant of good faith and fair dealing." (Doc. 5 at 6.) Plaintiffs seek "damages in the amount of the balance between a reasonable charge for services and the actual charges sought by Defendant." (Doc. 5 at 8.)

Defendants seek to dismiss Plaintiffs' claim on the basis that the Airline Deregulation Act of 1978 ("ADA") [*4] preempts this type of state law claim. (Doc. 3 at 6.)

II. LEGAL STANDARD

A motion to dismiss under [Rule 12\(b\)\(6\)](#) tests the legal sufficiency of a complaint. [Navarro v. Block, 250 F.3d 729, 732 \(9th Cir. 2001\)](#). In evaluating a 12(b)(6) motion, the Court "must take all allegations of material fact as true and construe them in the light most favorable to the nonmoving party." [Kwan v. Sanmedica Int'l, 854 F.3d 1088, 1096 \(9th Cir. 2017\)](#) (quoting [Turner](#)

v. City and County of San Francisco, 788 F.3d 1206, 1210 (9th Cir. 2015)). To survive a motion to dismiss, the complaint must allege sufficient facts to state a plausible claim for relief. *Taylor v. Yee*, 780 F.3d 928, 935 (9th Cir. 2015).

Federal courts generally view *Rule 12(b)(6)* dismissals "with disfavor." *Rennie & Laughlin, Inc. v. Chrysler Corp.*, 242 F.2d 208, 213 (9th Cir. 1957). "A case should be tried on the proofs rather than the pleadings." *Id.* Such dismissals are "especially disfavored" where the plaintiff bases the complaint on "a novel legal theory that can best be assessed after factual development." *McGary v. City of Portland*, 386 F.3d 1259, 1270 (9th Cir. 2004) (citations omitted). "It is important that new legal theories be explored and assayed in the light of actual facts rather than a pleader's suppositions." *Id.*

III. DISCUSSION

The ADA expressly preempts any state law or regulation "related to a price, route, or service of an air carrier." 49 U.S.C. § 41713(b)(1); *American Airlines Inc. v. Wolens*, 513 U.S. 219, 222, 115 S. Ct. 817, 130 L. Ed. 2d 715 (1995). The ADA also preempts causes of action that arise under state common law where such a claim undermines the statute's deregulatory aim. *Northwest, Inc. v. Ginsberg*, 572 U.S. , 134 S.Ct. 1422, 1428-30, 188 L. Ed. 2d 538 (2014). "What is important is the [*5] effect of a state law, regulation, or provision, not its form." *Id. at 1430*.

States may not impose "their own substantive standards with respect to rates,

or services." *Wolens*, 513 U.S. at 232. The ADA presents no bar to relief, however, where a plaintiff "claims and proves that an airline dishonored a term the airline itself stipulated." *Id. at 232-33*. Thus, the ADA provides no shelter for airlines from suits that allege no violation of state-imposed obligations, but seek recovery "solely for the airline's alleged breach of its own, self-imposed undertakings." *Id. at 228*.

The Supreme Court further has distinguished between self-imposed and state-imposed obligations that arise under implied covenants. The ADA preempts such state-imposed obligation where state law does not permit the parties to "contract out of" the state's implied covenant rules. *Ginsberg*, 134 S.Ct. at 1432. Conversely, implied covenant rules escape preemption "only if the law of the relevant State permits an airline to contract around those rules." *Id. at 1433*. The Supreme Court has recognized that such an obligation "cannot be viewed as simply an attempt to vindicate the parties' implicit understanding of the contract," but instead "seeks to enlarge" the agreement. *Id. at 1433*. This distinction confines courts, [*6] in breach-of-contract actions, "to the parties' bargain, with no enlargement or enhancement based on state laws or policies external to the agreement." *Wolens*, 513 U.S. at 233.

As the Ninth Circuit recently has noted, if the Plaintiff has adequately pleaded breach of contract, the ADA does not preempt the claim. *Hickcox-Huffman v. US Airways, Inc.*, 855 F.3d 1057, 1062 (9th Cir. 2017). To plead their claim adequately, Plaintiffs must allege facts demonstrating "the

existence of an enforceable contract, the defendant's breach, and damages to the plaintiff caused by the breach." *Id.* Further, with regard to the good faith and fair dealing claim, Plaintiffs would need to demonstrate that Montana law allows an air carrier to "contract around" the covenant. [Ginsberg, 134 S.Ct. at 1433.](#)

Plaintiffs have pleaded facts to support the following: (1) that a contract existed between the parties, (2) that the "reasonable worth" of the services constituted the "self-imposed" consideration term, and (3) that the \$109,590 charged by Defendants exceeded the "reasonable worth" of a 535-mile one-way trip in breach of contract. Plaintiffs additionally have pleaded that Montana law allows the parties to disclaim the covenant of good faith in fair dealing in the contract. [Farris v. Hutchinson, 254 Mont. 334, 838 P.2d 374 \(1992\).](#)

Plaintiffs assert that Defendants knowingly made a business [*7] judgment to omit the price term from their implied-in-fact contract by failing to specify a price at time of contracting or disclosing their pricing in advance. (Doc. 5 at 2-3.) The Court must take this factual allegation as true. [Kwan, 854 F.3d at 1096.](#) Defendants do not offer the Court any legal argument that can defeat Plaintiffs' factual assertion at this stage. Defendants instead argue alternative facts: that they did not assume voluntarily the obligation to charge "reasonable worth." Defendants bolster this factual argument with a legal theory. Defendants contend that the ADA prevents this Court from finding that they have assumed any such obligation. The Court cannot agree at this stage.

Under Montana law, "an implied contract is one the existence and terms of which are manifested by conduct." [Mont. Code Ann. § 28-2-103.](#) For a contract to exist, "it is essential that there be: (1) identifiable parties capable of contracting; (2) their consent; (4) a lawful object; and (4) a sufficient cause or consideration." [Mont. Code Ann. § 28-2-102.](#) All four elements exist here.

Plaintiffs' complaint, taken as true, alleges that the parties formed a contract, and that the Defendants' conduct in choosing not to disclose or otherwise specify consideration manifested [*8] the terms of that contract. (Doc. 5 at 5.) The Court notes that Defendants do not argue that the parties formed no contract. Any such claim could not overcome Plaintiffs' factual allegations at this stage. Even an implied-in-fact contract, as Defendants concede exists, must contain essential terms.

Further, Defendants acknowledge that they "transported at least 395 Montana patients by fixed-wing air ambulance" during the time period relevant to Plaintiffs' claims. (Doc. 1 at 5.) Plaintiffs allege that Defendants likely have entered into numerous contracts in the state of Montana as a result. (Doc. 5 at 9.) Plaintiffs allege that this activity reasonably would have placed Defendants on notice of the provisions of Montana law at issue.

Plaintiffs contend that Defendants opted not to specify consideration in lieu of these provisions of Montana law. (Doc. 5 at 2-3.) To the extent that Defendants argue that they explicitly opted not to specify

consideration, these fact-based arguments regarding the terms of the contract must wait further factual development. This assertion fails to defeat Plaintiff's taken-as-true factual allegations under the [12\(b\)\(6\)](#) standard. [McGary, 386 F.3d at 1270](#).

Defendants support their [*9] factual conclusions with a legal argument that ADA preemption prevents this Court from accepting Plaintiff's facts regarding the terms of the contract. Nothing in the ADA prohibits an air carrier from opting for a default term of consideration. Defendants have cited to no court decision that has interpreted the ADA in such a manner. The ADA would not preempt the suit if Defendants have incorporated the term as Plaintiffs allege.

Defendants' legal argument also rests on a reading of *Wolens* and *Ginsberg* that vests all the power at time of contracting in the air carrier party. (Doc. 3 at 20.) The decisions use terms like "stipulated" and "voluntary obligation" to bar suits where one party seeks to enlarge the parties' bargain. [Wolens, 513 U.S. at 228, 232-33](#). These decisions leave room for suits, however, that seek to vindicate the *parties'* understanding of the contract, not only the air carrier's understanding of the contract. [Ginsberg, 134 S.Ct. at 1433](#); [Wolens, 513 U.S. at 233](#). Plaintiffs contend that the parties' understanding of the contract reasonably assumed that Defendants would charge "reasonable worth" absent a price specified.

Defendants rely heavily on two federal district court cases that dismissed similar

claims on preemption grounds. (Doc. 3 at 21.) Both [*10] district court decisions simply accept that a contract exists despite the absence of an essential term. The court in [Schneberger v. Air Evac EMS, Inc., CIV-16-843-R, 2017 U.S. Dist. LEXIS 36701, 2017 WL 1026012, at *5 \(W.D. Okla. Mar 15, 2017\)](#), noted that "perhaps all that is certain is there was no supplied price." The court determined that a contract existed despite the absence of this essential term. The court in [Ferrell v. Air Evac EMS, Inc., No. 5:17-cv-124-DPM \(E.D. Ark. July 5, 2017\)](#), determined that a contract existed, but claimed that "it's not for the Court to say what the price will be." Transcript of Motions Hearing at 42. Both decisions fail to identify the consideration term in the contract. These cases simply apply preemption to defeat a challenge to a *billed* rate, without ever identifying a *set* rate.

The court in *Schneberger* further stated that the air carrier defendants "believe they are entitled to the full charges." [Schneberger, 2017 U.S. Dist. LEXIS 36701, 2017 WL 1026012, at *5](#). The court reasoned that including the reasonable worth term supplied by Oklahoma law in the implied-in-fact contract would "require them to accept less because of a policy-based inquiry." *Id.* Defendants' belief that they are entitled to their billed charges, however, should not set retroactively a contract price. A belief of entitlement [*11] does not excuse breach of contract if an air carrier billed a higher charge than that to which the parties agreed.

Defendants advance the same arguments as were presented to the district courts in

Schneberger and *Ferrell*. A circular logic permeates these arguments. The Supreme Court has recognized the breach-of-contract exception to ADA preemption. *Wolens*, 513 U.S. at 232-33; *Ginsberg*, 134 S.Ct. at 1433. Defendants nevertheless urge this Court to adopt a reading of the ADA that forecloses any conceivable breach of contract claim. Defendants reason that preemption under the ADA allows air carriers to form contracts that lack essential terms. This scenario apparently allows air carriers to set no rates, but instead bill customers any amount that the air carrier chooses, as evidenced by the \$109,590 bill received by Plaintiffs for a 535-mile one-way trip. Defendants' position leaves patients obligated to pay the *ex post facto* billed charge, to which they never agreed, without any chance for redress. Defendants seek to wield preemption as a cudgel to gain all the protections of a valid contract yet dodge liability for breach of contract claims by omitting essential terms.

Nothing in the language of the ADA presents a bar to recovery where [*12] an air carrier contracts for one amount, and bills another amount. The Supreme Court in *Wolens* allowed a claim for recovery to proceed where a party alleged that the airline had dishonored a contract term to which the airline had agreed. *Wolens*, 513 U.S. at 228. Plaintiffs here seek to extend this reasoning to a contract in which Plaintiffs allege that Defendants intentionally omitted a material term—price—with apparent knowledge of Montana law as evidenced by the 395 patients previously transported in Montana

by Defendants. (Doc. 1 at 5.)

The Supreme Court in *Ginsberg* dismissed an implied covenant claim on preemption grounds where Minnesota law imposed the obligation onto all contracts. *Ginsberg*, 134 S.Ct. at 1432-34. The Court noted in dicta, however, that the respondent may have been able to vindicate a breach-of-contract claim had he pursued it on appeal. *Id.* at 1433. The district court dismissed respondent's breach of contract claim and respondent had failed to appeal the denial. *Id.* The breach-of-contract claim alleged that the airline had violated the terms of its frequent flier agreement when the airline terminated respondent from the program. *Id.*

Similarly, the defendant in *Ferrell v. Air Evac EMS, Inc.* conceded at oral argument the potential [*13] redressability for breach of contract.

THE COURT: What if there was some contemporaneous discussion and agreement about price before the patient is transported . . . Preempted claim when the bill comes in higher than that agreed amount, or not?

COUNSEL: Not. It's not preempted. If we took on as a company an affirmative obligation, we made an express agreement, *or even it's evaluated in an implied-in-fact contract context, if we took on the obligation then it's not preempted.*

Transcript of Motions Hearing at 6-7, *Ferrell v. Air Evac EMS, Inc.*, No. 5:17-cv-124-DPM (E.D. Ark. July 5, 2017) (emphasis added). The court ultimately

dismissed the claims as preempted by the ADA without explanation as to how the absence of an agreed price could give rise to an implied-in-fact contract that lacked an essential term. *Id.*

IV. CONCLUSION

The ADA's express preemption provision does not preclude suits for breach-of-contract. *Wolens, 513 U.S. at 232*; *Hickcox-Huffman, 855 F.3d at 1062*. Courts have limited these suits to those that "attempt to vindicate the parties' implicit understanding of the contract." *Ginsberg, 134 S.Ct. at 1433*.

Under Montana law, consideration comprises one of four essential terms of a contract. *Mont. Code Ann. § 28-2-102*. Montana law requires that "the consideration must be so much money [*14] as the object of the contract is reasonably worth" where a contract's terms fail to specify consideration. *Mont. Code Ann. § 28-2-813*. Defendants have cited no provision of the ADA that prevents an air carrier from self-imposing a default term of consideration.

Plaintiffs have alleged in the Complaint that they entered into a contract with Defendants. (Doc. 5 at 5.) Plaintiffs assert that Defendants chose to specify no rate or charge. (Doc. 5 at 5.) Plaintiffs allege that Defendants "systematically and programmatically charge and bill" patients pursuant to "factually identical" contracts that lack a consideration term. (Docs. 5 at 3; 13 at 15.) Defendants, by their own admission, have transported numerous Montana patients. (Docs. 5 at 9; 1 at 5.)

Plaintiffs represented to the Court at oral argument that they expected that Defendants would charge "reasonable worth" absent specified consideration.

In sum, Plaintiffs allege that Defendants knowingly incorporated a consideration term of "reasonable worth" by their self-imposed and voluntary undertaking to omit a specific consideration term. (Doc. 5 at 3.) Plaintiffs allege Defendants have billed an amount, \$109,590, far in excess of reasonable worth, in breach of [*15] contract. (Doc. 5 at 6.) The Court must take as true the facts alleged by Plaintiffs on this motion to dismiss. *Kwan, 854 F.3d at 1096*. Moreover, the Ninth Circuit has not faced this question. Dismissal of the novel question presented by Plaintiffs' complaint would be especially disfavored. *McGary, 386 F.3d at 1270*.

V. ORDER

Accordingly, **IT IS HEREBY ORDERED** that Defendants' Motion to Dismiss (Doc. 2) is **DENIED**.

DATED this 26th day of October, 2017.

/s/ Brian Morris

Brian Morris

United States District Court Judge

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff
(s): **CHRISTINA C. WRAY**

County of Residence: Outside the State of Arizona

County Where Claim For Relief Arose: Outside the State of Arizona

Plaintiff's Atty(s):

Steven J. Hulsman
Lewis Roca Rothgerber Christie, LLP
201 E. Washington Street, Suite 1200
Phoenix, Arizona 85004
602-262-5313

Jared L. Sutton
Lewis Roca Rothgerber Christie, LLP
201 E. Washington Street, Suite 1200
Phoenix, Arizona 85004
602-262-5313

Defendant
(s): **PHI AIR MEDICAL, LLC**

County of Residence: Maricopa

Defendant's Atty(s):

II. Basis of Jurisdiction: **4. Diversity (complete item III)**

III. Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff:- **2 Citizen of Another State**
Defendant:- **4 AZ corp or Principal place of Bus. in AZ**

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **190 Other Contract**

VI. Cause of Action: **Common law breach of contract; declaratory action pursuant to
28 U.S.C. 2201**

VII. Requested in Complaint

Class Action: **Yes**
Dollar Demand:
Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: **Steven J. Hulsman**

Date: **2/6/2018**

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims PHI Air Medical Charges 'Excessive' Prices for Hospital Air Lift Services](#)
