IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 13-23671 CIV- COOKE / TORRES

**United States of America**
and
**The State of Florida, *ex rel.***
**Thomas Bingham,**

Plaintiffs,

vs.

**HCA, Inc.,**

Defendant.
_____

**REDACTED**
**FULL VERSION FILED UNDER SEAL**
FILED UNDER SEAL

**RELATOR BINGHAM'S SECOND AMENDED COMPLAINT**

**SECOND AMENDED COMPLAINT**

1. *Qui tam* Plaintiff Thomas Bingham ("Bingham"), by and through his attorneys, brings this Complaint on behalf of the United States and the State of Florida and on his own behalf, pursuant to 31 U.S.C. § 3730 of the Federal False Claims Act and the Florida False Claims Act, Fla. Stat. Ann. § 68.081 *et seq.*, based on HCA's (also known as "Hospital Corporation of America") payment of unlawful remuneration to referring physicians in violation of the Stark Law and the Anti-Kickback Statute.

2. HCA purposefully obscured the remuneration it paid physicians to induce them to refer patients to HCA's hospitals. HCA carried out this scheme by arranging to have remuneration pass through third parties (Developer/Landlords) and ultimately land in the pockets of physicians who referred patients to HCA.

3. HCA contracted with Developer/Landlords who developed and then leased medical office buildings ("MOBs") located on HCA-owned hospital campuses to physician tenants. HCA subsidized the Developer/Landlords and, in turn, the Developer/Landlords passed along valuable remuneration and financial benefits to the physician tenants who rented office space in these medical office buildings, as they in turn referred patients to HCA's hospitals.

4. HCA operated this illegal scheme in violation of a Corporate Integrity Agreement ("CIA") that was in effect between HCA and the U.S. government. The CIA mandated that HCA disclose financial relationships with physicians and payments to physicians in circumstances in which physicians received payments but provided no services in exchange for these payments.

5. In Aventura, Florida and Independence, Missouri, HCA's scheme included:

- Valuable inducements offered and paid directly to referring physicians to encourage them to locate and maintain their offices on HCA hospital campuses.
- Concealment of the payments by laundering the funds through in-kind payments, or through third-party medical office building owners.
- Control over third-party medical office building owners' relationships with their physician tenants through development agreements, "space leases," ground leases, the

and other advantageous agreements, so as to ensure the flow of remuneration to physicians who referred patients to HCA.

6. HCA implemented these illegal payments through the following mechanisms:

- Grossly undervalued long-term ground leases of undeveloped hospital campus properties.
- Payments to Developer/Landlords, characterized as rental payments for space in the medical office buildings that HCA had no intention to use.
- Direct remuneration paid to physician tenants.

7. Plaintiff relator Bingham alleged a near-identical scheme as part of the allegations in *United States ex rel. Bingham v. HCA*, No. 1:08-CV-71 (E.D. Tenn.) (settled for $16.5 million). There, the referring physicians in HCA's Largo, Florida hospital were paid as undisclosed limited partners of the MOB developer. In the Centerpoint scheme, described below, the referring physicians were paid through "Cash Flow Participation Agreements."

8. HCA's schemes at Centerpoint and Aventura are slight permutations of its previous duplicitous practices. These schemes involve a dizzying array of documents, none of which on its face indicates fraud. However, behind the complexity was a simple, systematic scheme: remunerate physician tenants who in turn refer patients to HCA's hospitals.

## I. Jurisdiction, Venue, Parties, and Transactional Background

### A. Jurisdiction, Venue and Parties

9. This is an action for civil damages and penalties under the False Claims Act, 31 U.S.C. § 3729 *et seq.* ("FCA") and the Florida False Claims Act, Fla. Stat. Ann. § 68.081 *et seq.* ("FFCA"). This Court has subject matter jurisdiction pursuant to 31 U.S.C. §§ 3732(a) and (b) and supplemental jurisdiction pursuant to 28 U.S.C. § 1359. The Court has personal jurisdiction over Defendant because Defendant transacts business and can be found in this district and Defendant committed acts within this district that violate 31 U.S.C. § 3729 *et seq.* as alleged herein.

10. Venue is proper in this district under 31 U.S.C. § 3732(a) because Defendant can be found in and transacts business in this district.

11. ***Qui Tam* Plaintiff Thomas Bingham** is an MAI appraiser and a Certified General Real Estate Appraiser in the State of Tennessee, Tennessee Certification No. 229, with nearly

30 years of appraisal experience. Since 2005, he has been employed with Holladay Properties, a full service real estate firm that includes property development, leasing and management. Holladay Properties is one of the country's largest third party property management firms for medical office buildings. Most of Bingham's workload as an appraiser consists of conducting market rent and fair market value ("FMV") analyses and studies.

12. Bingham has employed his special skills as a commercial real estate appraiser to reveal the fraud scheme alleged in this Complaint.

13. Bingham has synthesized and analyzed complex real estate and related documents to reveal these intentionally obscured frauds.

14. Bingham is an insider with respect to his knowledge of the scheme alleged herein as HCA had been a Holladay Properties client.

15. **Defendant HCA, Inc. ("HCA")** is a Delaware Corporation with its principal executive offices located at One Park Plaza, Nashville, Tennessee. HCA is a leading health care services provider in the United States, comprised of approximately 191 hospitals and 82 outpatient surgery centers.

16. HCA is long familiar with the False Claims Act, and has a long history of paying fines, civil damages, and other penalties on account of past kickbacks and self–referrals.

i. On December 17, 2015, HCA settled a case alleging unnecessary cardiac procedures. *United States ex rel. Fenster v. Hospital Corporation of America, et. al*, No. 13-24018-CIV-Cooke (transferred from CV-3-10-33 (S.D. Ga.)).

ii. On Nov. 5, 2015, HCA announced it agreed to pay $215 million to settle a shareholder lawsuit, alleging, in part, that HCA encouraged unnecessary cardiac procedures. *Schuh v HCA Holdings, Inc* 3:11-cv-01033 (M.D. Tenn.) (Sharp, J.).[1]

iii. Another case against HCA included allegations of *unnecessary cardiac procedures* at Aventura hospital. *U.S. ex rel. Gentile v. HCA*, No. 12-cv-20638, (S.D. Fla.) ("*HCA-Gentile"*) (doc. 1 at ¶¶ 235, 238). Mr. Gentile, an HCA insider, alleged HCA disregarded internal reports that documented thousands of medically unnecessary cardiac procedures. *HCA-Gentile*, doc. 1 at ¶ 19. *HCA-Gentile* also alleged HCA maintains a culture of "systemic fraud." *Id.* at ¶¶ 3-4.

[1] *See* http://www.reuters.com/article/hca-holdings-shareholder-settlement-idUSL1N12Z22920151104#X8HR0dfbMfDWsBWu.97

iv. In July 2013, twenty-three hospitals affiliated with HCA agreed to pay $7,145,842 to settle allegations of false claims to Medicare for kyphoplasty procedures.

v. In July 2013, HCA's Doctors Hospital of Augusta, Georgia agreed to pay the United States over $1,020,000 to settle a whistleblower's allegations concerning false claims for radiation oncology procedures performed without the requisite physician supervision.

vi. In January 2013, HCA was ordered to pay $**162 million** for failing to abide by its agreement to improve dilapidated hospitals. *Health Care Found. of Greater Kansas City v. HM Acquisition LLC.*, No. 0916-CV30692 (Mo. Cir. Ct., Jackson County).

vii. In 2012, HCA agreed to pay $16.5 million for kickbacks paid to physicians. *United States ex rel. Bingham v. HCA*, No. 1:08-CV-71 (E.D. Tenn.) (Bingham is the same relator as *Qui Tam* Plaintiff here).

viii. *U.S. et al. v. HCA et al., 8:12-cv-00734-JDW-TGW, closed 12/09/13*.

ix. In 2011, Medline Industries, Inc. agreed to pay $85 million to settle a whistleblower's allegations under the False Claims Act that the medical products company paid kickbacks to hospitals, including those owned by HCA.

x. In *Simpson et al. v. HCA, Inc. et al., 8:10cv01580-EAK-TGW, closed 02/14/14 (M.D. Fla)* (dkt 17, p. 2), settled by HCA in 2014, the terms were concealed and not made part of the record.

xi. In May 2009, a whistleblower filed *Porter v. HCA Health Servs. of Oklahoma, Inc.*, No. 3:09cv992 (N.D. Tex date) for violations of the False Claims Act. (resolution unknown).

xii. In 2008, a whistleblower filed *Hockett v. Columbia/HCA Healthcare Corp.*, No. 1:08cv22 (W.D. Va.) (filed 7/9/08) for violations of the False Claims Act.

xiii. A whistleblower filed under the False Claims Act in *Lester v. Central Florida Reg'l Hosp*., No. 6:08 cv1297 (M.D. Fla.).

xiv. In 2007, a whistleblower filed *McLean v. Blue Cross Blue Shield of South Carolina,* No. 2:07cv9717 (E.D. La.) for violations of the False Claims Act (resolution unknown).

17. In 2003, HCA Inc. (then known as Columbia/HCA and HCA - The Healthcare Company) agreed to pay the United States **$631 million** in civil penalties and damages. The

government alleged that, from the time one of its predecessors, Columbia Hospital Corporation, was formed in 1987, many of HCA's hospitals engaged in a pattern and practice of paying kickbacks to physicians to induce and reward patient referrals. Cases resolved under the 2003 settlement included:

i. *U.S. ex rel. Thompson v. Columbia/HCA Healthcare Corp.*, No. 99-3302 (D.D.C.)
ii. *U.S. ex rel. King v. Columbia/HCA Healthcare Corp., No. 99-306 (D.D.C.)*
iii. *U.S. ex rel. Mroz v. Columbia/HCA Healthcare Corp., No. 99-3292 (D.D.C.)*
iv. *U.S. ex rel. Alderson v. Columbia/HCA Healthcare Corp., No. 99-3290 (D.D.C.)*
v. *U.S. ex rel. Schilling v. Columbia/HCA Healthcare Corp., No. 99-3289 (D.D.C.)*
vi. *U.S. ex rel. Marine v. Columbia Aventura Medical Ctr., No. 00-1845 (D.D.C. )*[2]
vii. *U.S. ex rel. Parslow v. Columbia/HCA Healthcare Corp., No. 99-3338 (D.D.C.)*
viii. *U.S. ex rel. Lanni v. Curative Health Servs., Inc.*, No. 00-2584 (D.D.C.)

18. The United States prosecuted HCA executives for conspiracy to defraud the government, although in 2002 the Eleventh Circuit Court of Appeals overturned the convictions of HCA executives Robert Whiteside and Jay Jarrell. *United States v. Whiteside*, 285 F.3d 1345, 2002 U.S. App. LEXIS 4610 (11th Cir. 2002).[3]

19. In 2000, HCA (then known as HCA - The Healthcare Company) agreed to pay the United States **$745 million** related to allegations of numerous healthcare felonies.[4]

20. In addition, on December 10, 2015, HCA was ordered to pay **$434 million** to the Health Care Foundation of Kansas City. HCA bought the non-profit Health Midwest and promised to invest in the existing hospitals. Instead, it reneged on its commitments, shuttered low revenue hospitals, and promoted its more profitable hospitals such as Centerpoint. This relates to this case because HCA promoted Centerpoint, in part, with cash flow agreements

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[2] Columbia Aventura Medical Ctr. is the same hospital referred to as Aventura Hospital in this Complaint.

[3] A local paper reported: "The charges centered on convoluted accounting practices." http://www.sptimes.com/2002/03/26/TampaBay/Court_clears_ex_HCA_e.shtml. An apparent lesson learned by HCA's executives is that if the fraud is sufficiently complex no individual is held responsible.

[4] According to the website Politifact, HCA pled guilty to 14 felonies. http://www.politifact.com/florida/statements/2010/may/20/alex-sink/rick-scott-healthcare-ceo-faces-questions-a/

(discussed below) to incentivize referring physicians to rent space in Centerpoint's on-campus medical office building. *See* http://www.modernhealthcare.com/article/20151211/NEWS/151219967.

21. HCA owns and, through its East Florida Division, operates the Aventura Hospital and Medical Center (AHMC), which includes the Aventura Hospital, a 407 bed for-profit general medical and surgical hospital in Aventura, Florida.

22. HCA owns and operates the Miami Beach Healthcare Group, Ltd., through its wholly owned entity, the Columbia Hospital Corporation of Miami Beach.

23. HCA owns and operates Midwest Division-IRHC, LLC, a Delaware limited-liability company.

24. HCA owns and operates Centerpoint Medical Center of Independence, LLC, a Delaware limited liability company formerly known as Midwest Division-IRHC, LLC.

25. Bingham is informed and believes and herein alleges that with respect to the false claims alleged in this complaint, HCA's wholly owned entities, including the HCA East Florida Division; the Miami Beach Healthcare Group, Ltd.; the Columbia Hospital Corporation of Miami Beach; Aventura Hospital; AHMC; Midwest Division-IRHC, LLC; and Centerpoint Medical Center of Independence, LLC, are mere instrumentalities of HCA.

26. The allegations herein against HCA are made against HCA and its instrumentalities. The actions of HCA's instrumentalities are the actions of HCA.

### B. Transactional background

27. The life-blood of hospitals is the steady flow of physician-referred patients. In order to maintain and increase the number of physician-referred patients, hospitals have increasingly employed a variety of creative and oftentimes complex means, legal and illegal, to encourage and increase patient referrals from physicians.

28. One of the means increasingly used by hospitals over the last decade to encourage and increase the number of physician-referred patients is the use of ground leases to develop and construct medical office buildings ("MOBs") on hospital campuses. In a typical scenario, the hospital will enter into a long-term ground lease with a developer to construct a MOB on an undeveloped portion of the hospital campus. The purpose of this is to situate physician offices

in close proximity to the hospital so as to facilitate and thereby increase patient referrals. [5] Although the building itself belongs to the developer, by entering into a long-term ground lease of the property upon which the building sits, instead of selling it, the hospital maintains some control, including:

- restricting qualified tenants to physicians with hospital privileges,
- prohibiting medical uses that compete with services offered by the hospital,
- permitting medical uses that encourage physicians to refer to the hospital.

29. A hospital is also able to provide a developer, as part of the deal, easements to other parts of the hospital campus to be used in connection with the MOB, such as parking facilities, walkways, and utilities. These easements, along with other incentives and benefits, are designed to encourage and increase the referral of patients from the tenants to the hospital.

30. Because the ground lease scenario normally involves several inter-related, cross-referencing and complicated real estate transactions, it can be manipulated to conceal any unlawful compensation arrangements.

31. Except for minor differences between campuses, HCA developed a consistent ground lease/medical office model that it implemented at various hospital campuses nationwide — including HCA's hospital campuses in Independence, Missouri and Aventura, Florida — that conceal unlawful compensation arrangements to increase physician referrals.

32. HCA's typical ground lease model includes the following features:

a. Remuneration paid to referring physician tenants via contractual, ownership, or equity interests in the medical office building, as directed by HCA, which HCA pays by means of covert subsidies to the developer, or by granting easements directly to tenant physicians;

b. A long-term grossly undervalued ground lease entered into with the developer on an undeveloped parcel of HCA's hospital campus, adjacent to the hospital, that is only slightly larger than the space upon which the medical office building will be constructed;

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[5] For example: "Aventura [Hospital] is currently in the process of constructing a 100,000 square foot medical office building *to support the continued recruitment of high-quality physicians…"* Heather Rohan, CEO Aventura Hospital, letter to City of Aventura commission opposing Mount Sinai Hospital's request for certificate of need. October 10, 2005 (emphasis added).

c. Subsidized and valuable long-term parking easements and valuable parking facilities built by HCA at no cost to the tenants or developer, sufficient in size and duration to allow the developer/owner to avoid expensive regulatory/zoning parking space requirements for a building that, in turn, provides parking without charge to physician tenants, their employees, their patients, and others;

d. Subsidized office leases paid for by HCA for space it does not intend to use;

e. Subsidized support for the developer/landlord, which can be passed on to physician tenants;

f. The recording of only a summary of the ground lease between HCA and the developer/owner that conceals the financial terms.

33. HCA's grant of long-term parking easements to the developer/owner also significantly boosts the buildings' values, which can be used as collateral for financing, subsequent refinancing, or sale, also inuring to the benefit of physician tenants.

## II. Applicable Statutory and Regulatory Provisions

### A. The Stark Statute

34. 42 U.S.C. § 1395nn (commonly known as the "Stark Statute" or "Stark II") prohibits hospitals and certain other designated health services providers from submitting Medicare claims for payment for items and services that are the product of patient referrals from physicians having a "financial relationship" (as defined in the statute) with the hospital. The Stark Statute requires that Medicare deny payment for claims for any service billed in violation of its provisions. 42 U.S.C. § 1395nn(g). In addition, it requires that providers who have collected Medicare payments for a healthcare service "performed under a prohibited referral must refund all collected amounts on a timely basis." 42 C.F.R. § 411.353.

35. The Stark Statute establishes the presumptive rule that providers may not bill and Medicare will not pay for designated health services (as defined in the statute) generated by a referral from a physician with whom the provider has a financial relationship. 42 U.S.C. §§ 1395nn(a)(1), (g)(1). The Statute was designed to protect the federal healthcare programs from paying for the costs of questionable utilization of services by removing monetary influences on referral decisions.

36. At all times relevant to this Complaint, the Stark Statute has applied to payments to

referring physicians by hospitals and the resulting claims to the Medicare program. *See* 42 U.S.C. § 1395nn(h)(6)(K). In pertinent part, the Stark Statute provides as follows:

> (a) Prohibition of certain referrals
> (1) In general
> Except as provided in subsection (b) of this section, if a physician (or an immediate family member of such physician) has a financial relationship with an entity specified in paragraph (2), then–
> (A) the physician may not make a referral to the entity for the furnishing of designated health services for which payment otherwise may be made under this subchapter, and
> (B) the entity may not present or cause to be presented a claim under this subchapter or bill to any individual, third party payor, or other entity for designated health services furnished pursuant to a referral prohibited under subparagraph (A).

42 U.S.C. § 1395nn.

37. The Stark Statute broadly defines covered financial relationships to include any "compensation" paid *directly or indirectly* to a referring physician. 42 U.S.C. § 1395nn(a)(2). Hospitals are prohibited from billing Medicare for designated health services provided to patients referred by a physician with whom the hospital has a financial relationship or "compensation arrangement," unless an express statutory or regulatory exception for the financial relationship applies. *See* 42 U.S.C. §§ 1395nn(a), (b).

38. An *indirect financial relationship* exists if, *inter alia*, there is an indirect compensation arrangement between the referring physician and an entity that furnishes services. An indirect compensation arrangement exists if, *inter alia*, the referring physician receives aggregate compensation that "varies with, or takes into account, the volume or value of referrals or other business generated by the referring physician for the entity furnishing services." 42 C.F.R. § 411.354(c)(2)(ii). Such an arrangement further requires an "unbroken chain" between the referring physician and the entity furnishing the services, and the entity must have knowledge or act in reckless disregard of the fact that the physician receives compensation that varies with or takes into account the volume or value of referrals. 42 C.F.R. § 411.354(c)(2).

39. Compensation arrangements include any arrangement involving any remuneration between a physician and an entity, directly or indirectly, overtly or covertly, in cash as well as in-kind transfers of benefits for a cost other than fair market value.

40. Most Stark Statute exceptions parallel the regulatory and statutory exceptions to the

AKS. *See* 42 C.F.R. § 1001.952.

41. As HCA has long known, a violation of the Stark Law is enforceable under the False Claims Act. *United States ex rel. Thompson v. Columbia/HCA Healthcare Corp*, 20 F. Supp. 2d 1017, 1047 (S.D. Tex 1998).

### B. The Anti-Kickback Statute (AKS)

42. The AKS, 42 U.S.C. § 1320a-7b(b), prohibits, among other things, paying kickbacks to induce referrals for services paid under federal health care programs. The AKS arose out of Congressional concern that payoffs to those who can influence healthcare decisions corrupt professional healthcare decision-making and may result in federal funds being diverted to pay for goods or services that are medically unnecessary, of poor quality, or even harmful to a vulnerable patient population. The AKS prohibits payment of kickbacks in order to protect the integrity of the federal health care programs from these difficult to detect harms. First enacted in 1972, Congress strengthened the AKS in 1977 and 1987 to ensure that kickbacks masquerading as legitimate transactions do not evade its reach. *See* Social Security Amendments of 1972, Pub. L. No. 92-603, §§ 242(b) and (c); 42 U.S.C. § 1320a-7b, Medicare-Medicaid Antifraud and Abuse Amendments, Pub. L. No. 95-142; Medicare and Medicaid Patient and Program Protection Act of 1987, Pub. L. No. 100-93.

43. The AKS prohibits any person or entity from making or accepting payment to induce or reward any person for referring, recommending or arranging for federally-funded medical items and services, including items and services provided under the Medicare program, state Medicaid and Tricare, among others. In pertinent part, the statute states:

> (b) Illegal remuneration
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> * * *
>
> (2) whoever knowingly and willfully *offers* or pays any remuneration (including any kickback, bribe, or rebate) directly *or indirectly*, overtly *or covertly*, in cash or in kind to any person to induce such person-
>
> (A) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, or
>
> (B) to purchase, lease, order or arrange for or recommend purchasing, leasing or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program,
>
> shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

42 U.S.C. § 1320a-7b(b)(2)(emphasis added).

44. Violation of the statute can also subject the perpetrator to exclusion from participation in federal health care programs and civil monetary penalties of up to $50,000 per violation and up to three times the amount of remuneration paid. 42 U.S.C. § 1320a-7(b)(7); 42 U.S.C. § 1320a-7(a)(7).

45. A claim that includes items or services resulting from a violation of the AKS constitutes a false or fraudulent claim for purposes of the False Claims Act. 42 U.S.C. § 1320a-7b(g).

### C. The False Claims Act

46. The False Claims Act prohibits the submission of false or fraudulent claims and false statements in order to obtain or keep federal money. It provides, in pertinent part:

> (1) Any person who (A) knowingly presents, or causes to be presented, to an officer, agent, contractor or employee of the United States Government of the United States a false or fraudulent claim for payment or approval; or (B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
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> * * *
>
> is liable to the United States Government for a civil penalty of not less than $5000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 . . ., plus 3 times the amount of damages which the Government sustains because of the act of that person.

31 U.S.C. § 3729(a).

### D. The Florida False Claims Act

47. The Florida False Claims Act prohibits the submission of false or fraudulent claims and false statements to state agencies in order to obtain or keep state money. It provides, in pertinent part:

> (2) Any person who:
>
> (a) Knowingly presents or causes to be presented to an officer or employee of an agency a false or fraudulent claim for payment or approval; or
>
> (b) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false or fraudulent claim paid or approved by an agency;
>
> ***

is liable to the state for a civil penalty of not less than $5500 and not more than $11000 and for treble the amount of damages the agency sustains because of the act or omission of that person.

48. Both the FCA and the Florida FCA define "knowingly" as follows:

(1) the terms "knowing" and "knowingly"
(A) mean that a person, with respect to information-- (i) has actual knowledge of the information; (ii) acts in deliberate ignorance of the truth or falsity of the information; or (iii) acts in reckless disregard of the truth or falsity of the information; and no proof of specific intent to defraud is required.

## III. Centerpoint Violations of 31 U.S.C. §§ 3729(a)(1)(A) & (B)

*Qui Tam* Plaintiff repeats and realleges the paragraphs above as if fully set forth herein.

### A. HCA Midwest Health System and Centerpoint Medical Center

49. HCA owns and operates Centerpoint Medical Center, a hospital complex located at 19600 East 39th Street, Independence, Missouri. The 86-acre campus includes a 221-bed hospital connected to a medical office building. The hospital and the medical office building share parking facilities.

50. In June 2005, a wholly owned HCA entity, Midwest Division-IRHC, LLC (hereinafter "HCA"), leased undeveloped land (the "ground lease") on HCA's Centerpoint Medical Center campus to "Tegra,"[6] a medical office building developer and property management company.

51. Tegra paid HCA a single lump sum of $1,780,000 for the 99-year ground lease.

52. The lease payment of $1,780,000 was significantly below fair market value.

53. The ground lease from HCA to Tegra envisioned an ambulatory surgical

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[6] HCA's wholly owned subsidiary Midwest Division, Inc. does business as HCA Midwest Division, *et al*., including Midwest Health System, which HCA acquired in 2003.

The terms of the June 27, 2005, confidential Centerpoint MOB ground lease between Midwest Division-IRHC, LLC [HCA] and Tegra Independence Medical Surgical, L.C., a Utah limited liability company, in addition to the 99-year lease term, included four renewal options of 25 years each for a nominal payment of $100. The ground lease was not recorded. Instead, a *Memorandum of Ground Lease*, omitting the key financial terms, was recorded in Instrument # 2005I0064161.

Tegra Healthcare Properties, part of The Boyer Company (Salt Lake City), developed the MOB, hereinafter "Tegra".

center/medical office building of approximately 201,404 rentable sq. ft. on approximately 1.5 acres.

54. The ground lease included a parking easement of 9.5 acres on HCA's property immediately adjacent to the leased property. The provision granted Tegra, the ground lease tenant, a perpetual nonexclusive right and easement to HCA's adjacent parking facilities.

55. On the same day that HCA entered into the ground lease, HCA and Tegra also entered into a confidential "Development Agreement."[7] Doc 14-8.

56. Pursuant to the Development Agreement, HCA agreed to construct and maintain at its own expense a sufficient number of parking spaces (as required by local zoning and regulatory requirements) on the adjacent parking easement area so as to meet all the parking needs of the ambulatory surgical center/medical office building to be built by Tegra on the ground leased property. Doc. 14-8.

57. From 2005 to 2007, Tegra developed and built the Centerpoint Medical Office Building at a cost of approximately $30,000,000. The four-story Centerpoint MOB, located at 19550 E. 39th St., Independence, MO, contains approximately 201,404 rentable square feet.

58. In 2012, Tegra sold the building, ground lease, and the associated easements for approximately $50,000,000.

59. As alleged herein, in accordance with the June 2005 Agreements, HCA subsidized Tegra's development and operation of the Centerpoint MOB. In return, it required that Tegra share a portion of the building's cash flow, including proceeds from the sale of the MOB, with its physician tenants.

### B. Physician Payments through Cash Flow Participation Agreements

60. Pursuant to its agreements with HCA, Tegra entered into *Cash Flow Participation Agreements"* with several referring physician tenants of the Centerpoint MOB. Under the Cash Flow Participation Agreements, Tegra compensated each of these tenants with pro-rata portions from *the property's operating cash flow*, including proceeds from the 2012 sale of the building.

61. The Cash Flow Participation Agreements provided in part:

i. "Operating Cash Flow" means all rent less all expenditures. Operating cash

[7] June 27, 2005 Development Agreement between Tegra Independence Medical Surgical, L.C., and Hospital Midwest Division-IRHC, LLC. Doc. 14-8.

> flow shall be calculated on a yearly basis.
>
> j. Participant's Participation Percentage means a percentage calculated in accordance with the following formula: (Leased Space/Total Leasable Space in Building) (49%) = equals participant's participation percentage. As of the date of this agreement, participant's participation percentage is 2.83%. Participant's participation percentage shall adjust automatically upon a change in the leased space pursuant to an amendment of the lease. For purposes hereof, the term "leased space" has the same meaning given such term in the lease.
>
> j. "Participants Share of Operating Cash Flow" means the product obtained by multiplying the Operating Cash Flow for the year by Participant's Participation Percentage.[8]
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> . . .
>
> l. "Participant's Termination Share" means an amount equal to the product obtained by multiplying the Sale Proceeds by the Participant's Participation Percentage.

Doc. 14-1, Hausheer Braby Cash Flow Participation Agreement, para. 1 "Definitions" [*Emphasis supplied*]. Doc. 14-3, Independence Women's Clinic, Suite 300, same.

62. Because payments under the Cash Flow Participation Agreements also increased with the size of the leased space, the payments made to the referring physicians varied with, or took into account, the volume or value of referrals or other business that they generated.

63. Relator knows of the existence of the following Cash Flow Participation Agreements, although there may be others:

| Tenant | Suite | Cash Flow Participation % |
|---|---|---|
| Independence Neurosurgery Svcs. | 105 | 1.64% |
| Midwest Cardiology Associates | 210 | 2.19% |
| Centerpoint Orthopedics | 230 | 1.31% |
| Independence Women's Clinic | 300 | 3.66% |
| Hausheer Braby | 310 | 2.83% |
| Independence Surgical Clinic | 325 | 0.58% |
| Jackson County Medical Group | 335 | 2.00% |
| Orthopedic Assoc. of K.C. | 400 | 1.28% |
| Mark Killman, MD | 415 | 0.26% |

64. The referring physicians' remuneration under the Cash Flow Participation Agreements was offered as an inducement to enter into leases in the MOB, notwithstanding that they were dated to appear as if they were entered into a year or so after the leases' executions.

[8] Two paragraphs labeled "j" in originals.

65. The Cash Flow Participation Agreement made express its sole purpose to induce referring physicians to lease space on HCA's campus.

> 2. Execution of Lease Agreement by Participant. In consideration of this Agreement, Participant acknowledges that it has executed and delivered the Lease Agreement with Tegra.

Doc. 14-1, Hausheer Braby Cash Flow Participation Agreement [Emphasis added]. Doc. 14-3, Independence Women's Clinic, Cash Flow Participation Agreement, same.

66. The Cash Flow Participation Agreements' execution dates are inconsistent with express language contained in some of the leases. For example, at ¶ 25.19, last line, of the Hausheer Brady lease, express reference is made to the concurrent execution and delivery of the cash flow agreement.

> Notwithstanding the foregoing to the contrary, Landlord and *Tenant are executing and delivering* a cash flow participation agreement in the form attached hereto as exhibit "F".

Doc. 14-2, p. 25, ¶ 25.19, Hausheer Braby Lease (emphasis added). *See also* Doc.14-4, p. 23, ¶25.19, Independence Women's Clinic Lease, Suite 300 (same).

67. The purported dates of the Cash Flow Agreements, which are dated approximately a year or so after the referring physician tenants entered into their leases and after they were already occupying their suites, are not consistent with the express language and express statement of consideration set forth in the "Recital" portion and paragraph 2 of the Cash Flow Agreements:

> A. Tegra *intends to construct* a Building (as defined below).
>
> B. Incident to prior negotiations and in contemplation of this Agreement, Participant, as tenant, has entered into a long-term lease agreement with Tegra as landlord.
>
> C. In consideration of executing said long-term lease agreement, *but not as part of the lease agreement*, Tegra has agreed to provide to participant, and participant is willing to accept such consideration as set forth in this agreement.

Doc. 14-1, Hausheer Braby Cash Flow Participation Agreement [*Emphasis added*]. Doc. 14-3, Independence Women's Clinic, same.

68. For example, notwithstanding the first sentence of the Cash Flow Participation Agreement with the Independence Women's Clinic that "Tegra intends to construct a Building," the agreement is hand-dated on page 1 as May 16, 2008, and stamped Mar 26, 2008. Doc. 14-3. There are no dates on the signature page. The lease was entered into on May 17, 2007, and occupancy began December 2007. Doc 14-4 (lease), and Doc. 14-6, Lease Profiles, p. 23.

69. In addition, the leases' exhibit F (Docs. 14-2, p. 45; 14-4, p. 44) are Cash Flow Agreements, substantially identical to the signed agreement (Docs. 14-1 and 14-3).

70. The Cash Flow Participation Agreement with Hausheer Braby, which begins with the identical language that "Tegra intends to construct a building…," is hand-dated April 2, 2008. However, the lease is dated October 4, 2006. Docs. 14-1 and 14-2.

71. By post-dating the Cash Flow Participation Agreements, HCA and Tegra intentionally sought to make it appear as if the leases were executed earlier than the dates on which the Cash Flow Participation Agreements were executed.

72. HCA was subsidizing a portion of Tegra's cash flow at the time the leases and Cash Flow Participation Agreements were being *offered* to referring physician tenants. *See Physician Payments through Cash Flow Participation Agreement*, p. 16.

73. The Cash Flow Participation Agreements prohibited the physician tenants from offsetting rent due Tegra against anticipated payments from Tegra under the Agreements. Docs. 14-1 and 1 -3, para. 7, last line.

74. The apparent purpose for this prohibition against rent offset was to maintain the ruse to auditors and others involved in ensuring compliance with the Corporate Integrity Agreement in effect at the time that physician tenants' rents were being charged at fair market value, that HCA was not providing inducements to referring physicians, and that the MOBs were run by "*independent* third-party managers" as required by the Corporate Integrity Agreement. *See HCA Violated its Corporate Integrity Agreement (CIA)*, below.

75. Because tenants with larger spaces generally tend to refer more business to the hospital, allowing a referring tenant to offset rent that was due against a "cash flow" share that was based on the size of the tenant's leased space would have revealed to auditors that the rents varied with or took into account the volume or value of referrals or other business generated by the tenant.

### C. Physician Payment Upon Sale of Building

76. Cash Flow Participation Agreements are sometimes referred to as "phantom" or "soft" equity arrangements. "Phantom" because they are hidden, and "soft" because the owner enjoys the upside of an equity interest, but no downsides.[9]

77. On October 12, 2012, Tegra sold the Independence MOB property, which included the costly HCA-subsidized parking easement to the improved parking lot, for approximately $50,000,000.[10]

78. Relator estimates that Tegra's "Sale Proceeds" (as defined in the Cash Flow Participation Agreements) were approximately $17 million based on the $50 million sales price and a loan estimated at $33 million. Because it acted as a conduit for HCA's scheme to provide remuneration to referring physicians, Tegra did not realize those proceeds entirely for itself. A portion was doled out to its referring physician tenants, in accordance with the "Participant's Termination Share" provision in the Cash Flow Participation Agreements.

79. For example, Relator estimates that following the sale, Hausheer Braby would have been paid $481,100 ($17 million x 2.83%), and Independence Women's Clinic would have been paid $622,200 for its 3.66% share.

80. Because the larger offices that could be expected to refer more patients received a greater "Participant's Termination Share," the inducement that was offered and eventually paid varied with or took into account the volume or value of the referring physician's referrals.

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[9] *Phantom Equity Arrangements*
A "phantom" or "soft" equity arrangement is an agreement that gives the tenant a claim to the property's future appreciation. The tenant does not obtain any tax benefits or receive any part of the operating cash flows. The soft equity arrangement avoids the possibility that the tenant will be required to fund operating deficits and potential equity accounting problems.
http://www.officeleasingusa.com/downloads/EquityParticipationLeasesNew.pdf. Last visited February 5, 2016.

[10] The purchaser was HCP MOB Centerpoint LLC, an entity related to HCP, Inc., a real estate investment trust (NYSE: HCP). Neither HCP entity is a party in this suit.

### D. Subsidy Through Parking Easement Worth More than Ground Lease Payment

81. HCA arranged to remunerate referring physicians by subsidizing Tegra through the valuable parking easement. Exhibit H, Development Agreement., ¶1 (b).

82. As part of the ground lease, HCA granted Tegra a long-term parking easement with a value that far exceeded the amount that Tegra paid HCA for the 99-year ground leased hospital campus property upon which the Centerpoint MOB was built.

83. Under the local ordinance, a builder is required to include one parking space per 200 SF of gross floor area (5 spaces per 1,000 sq. ft.) for medical service uses. Thus, pursuant to the local ordinance, 1,038 parking spaces (207,600 SF/200 SF per space) were required to service the Centerpoint MOB.

84. Relator estimates that an Independence, Missouri surface parking lot's construction costs for 1,038 spaces would be $2,335,500. In addition, a developer would need to purchase or lease additional land for a parking lot (the most common approach in Missouri) or construct a parking structure at additional and considerable cost.

85. Rather than have Tegra expend the funds to construct a parking structure or purchase or lease additional land for a lot containing over 1,000 parking spaces, HCA constructed the required parking spaces at its expense on its own property and granted Tegra, as part of the 99-year ground lease, a perpetual easement giving it the right to use HCA's parking facilities for the entire length of the lease term. HCA constructed the required parking on approximately 415,200 sq. ft. (9.53 acres) with at least 1,038 parking spaces and it did so simultaneously with Tegra's development and construction of the Centerpoint MOB. Doc 14-8, ¶1 (b), Development Agreement.

86. The 9 ½ acre parking easement enjoyed by Tegra is more than six times the size of the one and one-half acre ground lease parcel. To put it another way, HCA gave up 9 ½ acres to lease 1 ½ acres for the construction of a medical office building for referring physicians. This only makes sense if a primary purpose of the arrangement was to subsidize Tegra by providing it with a valuable asset that could then be paid to referring-physician tenants pursuant to the Cash Flow Participation Agreements, in addition to providing the referring-physician tenants the valuable benefit of free parking.

87. It is difficult to place a specific value on the parking benefits enjoyed by each of the

referring-physician tenants of the Centerpoint MOB because the value of the parking benefit varies with the volume of use by the physicians and their employees, patients and visitors. However, the benefit continues through the present.

88. Since a referring-physician's hospital referrals vary with the volume of patients seen by that physician, each physician tenant enjoyed a parking benefit of a value that varied with, or took into account, the volume or value of referrals or other business generated by the referring physician.

89. The value of the ground lease was significantly increased by the parking easement, an increase in value entirely provided by HCA. This can be measured by the cost savings to Tegra in not having to acquire the land necessary to build both the Centerpoint MOB and the necessary parking facilities, a site value estimated at approximately $3,365,000, nor by having to construct the surface parking lot and the related site improvements at a cost estimated to be approximately $2,335,000, for a total cost savings of approximately $5,700,000.

90. These reduced development costs resulted in an inflated profit for Tegra when the MOB and its leasehold interests were later sold in 2012, a profit that was shared with referring-physician tenants through the Cash Flow Participation Agreements.

### E. Rent for Unused Space Provided Subsidy of $1.46 Million

91. HCA further subsidized Tegra by paying Tegra for space in Tegra's building, some of which it planned to actually use, and the rest of which it would not use. Development Agreement, Doc. 14-8, ¶1 (d) and (e); Doc. 14-5, Space Lease.

92. The agreement to pay for space HCA never intended to use was referenced as "Space Lease" and covered approximately 70,477 sq. ft. [11] Doc. 14-8, ¶1 (e).Whenever any portion of that space was leased to a tenant who actually intended to occupy the space, that portion was eliminated and HCA's "rent" was reduced.

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[11] Tegra Independence Medical Surgical, L.C. leased to Midwest Division-IRHC, LLC [HCA], 70,477 sq. ft. of rentable area (later amended to 89,051 RSF on July 17, 2006) for seven (7) years commencing July 1, 2006 with two 5-year options for a Basic Rent of $13.06/RSF, increasing 3% per year and additional rent requiring HCA to pay a pro-rata share of costs including taxes, insurance and maintenance, not to exceed $3.50/RSF per year. Doc. 14-5. The lease was not recorded. Various amendments to the lease reference it as a "Burn–off Lease." *Id.*

93. HCA agreed to pay Tegra $13.06 per sq. foot plus $3.50 costs (an initial annual commitment of $1,167,099) for "Space" it had no intention to use and, in fact, never used.

94. Relator estimates that HCA paid Tegra $1.46 million to leave space empty until occupied by referring-physician tenants.

95. Had Tegra not secured tenants as quickly as it did, HCA's so-called "Additional Space" commitment would have dwarfed the $1.78 million it received for its 99-year ground lease.

96. The "Space Lease" was never intended for HCA's use. Rather, it was a cash-flow subsidy for Tegra with the understanding that HCA would be relieved of this burden only as Tegra leased space to medical (referring) tenants who would actually use the space.[12]

97. One of HCA's purposes in leasing the space was to ensure that the space would be made available to referring physicians:

> 25.17 Leasing Requirements. All leases of space in the Building made by Landlord [Tegra] to third parties *shall be for physician office purposes only*, unless Tenant [HCA] consents in writing to another use of the space.
> Doc. 14-5. Space Lease, p. 23 (emphasis added).

98. Further, and notwithstanding the near simultaneous execution of the agreement in which HCA required Tegra to give physician tenants a $55 per sq. ft. tenant improvement allowance, HCA imposed upon itself a "tenant's construction obligation" to make improvements to the "burn-off" space that would eventually be leased to physician tenants. Doc. 14-5, p. 36, Space Lease, "Tenant's Construction Obligation."

99. HCA's construction obligation included all electrical work, all arrangements for telephone service and conduits, utility meters, all interior partitioning and drywall, all interior doors and door frames, all floor covering and floor materials, alarm systems, special plumbing and water heater, special ventilation, special equipment, interior painting, ceiling, heating and air-conditioning duct work and controls. Doc. 14-5, p. 36, Space Lease, "Tenant's Construction Obligation."

100. HCA leased this space from Tegra with no legitimate business purpose other than to subsidize Tegra's cash-flow. By leasing this space, HCA subsidized Tegra's holding costs in

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[12] The leased space HCA actually used was substantial and included an ambulatory surgical center (19,342 RSF on first floor), the balance of the first floor containing approximately 31,384 RSF plus spaces for a diabetes and wound center (5,215 RSF), sleep study lab (3,612 RSF), and cardiac rehabilitation center (10,953 RSF) on the building's upper levels.

the interim period between completion of the building shell and stabilized occupancy.

101. HCA's payments reduced Tegra's project development costs which increased its profit when it sold to HCP, a profit shared with referring physician tenant participants in the CFPAs.

102. Consequently, the purpose of the "Additional Space" lease was to induce referrals by allowing Tegra to keep space vacant until it secured referring physician tenants, to ensure a continuous and significant cash flow, and to boost the value of the building for resale, which increased the amount that would be shared with referring-physician tenants.

103. Relator estimates HCA eventually paid Tegra $1.46 million for this never-used space and that a portion of this $1.46 million subsidy that was realized by Tegra in the form of project cost reductions and building resale value was passed along to physician tenants through Cash Flow Participation Agreements.

**F. Summary**

104. The development of the Centerpoint MOB was a complex real estate transaction, involving extensive planning at HCA's highest corporate levels. *See HCA corporate designed, implemented and concealed the scheme*, p. 58.

105. One purpose for the construction of an on-campus medical office building for the Centerpoint Hospital, one of HCA's largest, as with all on-campus MOBs, was to increase patient referrals.

106. The planning and execution of this project during 2006 and earlier coincided with HCA's obligations under its Corporate Integrity Agreement ("CIA") and reporting requirements to the Office of Inspector General (OIG). Its actions, as detailed above, were in direct derogation of the promises it made under the CIA and were intentionally designed to circumvent these obligations and mandates.

107. HCA subsidized Tegra's investment with a grossly undervalued ground lease and free parking benefits and by leasing space it never occupied and never intended to occupy. It not only controlled the type of tenants allowed to lease medical office space from Tegra, HCA also ensured that these tenants, who were referring physicians, would receive remuneration through "Cash Flow Participation," which included sharing in the inflated profits from the sale of the building— all of which was done in violation of the existing CIA's mandate that "all medical office buildings will be managed by professional independent third-party managers."

## IV. Aventura Violations of 31 U.S.C. §§ 3729(a)(1)(A) & (B) [13]

*Qui Tam* Plaintiff repeats and realleges the paragraphs above as if fully set forth herein.

108. HCA owns and operates Aventura Hospital, a hospital complex located at 20900 Biscayne Boulevard, Aventura, Florida. [Hereinafter "HCA" or "Aventura Hospital"] [14]

109. In addition to the hospital, the hospital campus includes several medical office buildings, parking garages, and above-ground parking.

[13] HCA designated many documents "confidential" pursuant to the Protective Order. Doc. 51. Relator is filing a redacted version of this Complaint and moving to file the confidential exhibits under seal.

[14] The HCA entities included Miami Beach Healthcare Group, Ltd., a Florida limited partnership, and Columbia Hospital Corporation of Miami Beach, its general partner.

[15] *See generally*, Ex. 1 Composite Aventura Marketing. *See, e.g.* HCA_0002427 August

116. Notably absent was in-depth discussion of the financial feasibility and commercial reasonableness of a medical office building, adjacent to the hospital, that charged per foot.

117. HCA had determined the new building would require at least parking spaces. In addition to the costs HCA had already incurred purchasing the land and preparing the site, this would require *additional* construction costs of approximately

118. As further explained below, the

The building was neither financially feasible nor "commercially reasonable." [21]

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[17] Ex. 1 Composite Aventura Marketing at HCA_0002236.

[18] Ex. 1 Composite Aventura Marketing at HCA_0002236,

[19] Because tenant improvement is based on usable feet (space inside the office), rather than rentable feet (space inside the office, plus a proportionate share of common area), the hypothetical allowance tenant is multiplied by a smaller number than the rent.

[21] One of the elements HCA must prove to meet *its burden* of proving it meets the real estate exception under the Stark Statute is that "the lease would be commercially reasonable even if no referrals were made between the parties." 42 U.S.C. § 1395nn(e)(1)(A)(v). Numbers show this is not the case.

But no consideration was given to raising the proposed per foot to a commercially reasonable rate.[23]

### A. HCA subsidized the MOB to induce referrals.

123. HCA considered a few ways in which it would accomplish an on-campus MOB for

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22 Cash flow analysis, August 11, 2003.
as its share of the garage and related costs. *Id*.

23 Ex. 1, Composite Aventura Marketing at HCA_0002396,

24 Ex. 1, Composite Aventura Marketing at HCA_0002046,

26 *See, e.g.* Ex. 1 Composite Aventura Marketing at HCA_0002448, HCA_0002396,

125. In recognition of the compliance risks possibly resulting from

[27] On June 21, 2004, William R. Greenfield, owner of the Greenfield Group, formed RTH Equity, LLC, a wholly owned Greenfield Group entity. In turn, on June 22, 2004, RTH Equity, LLC, formed RTH Partners, LLLP, with RTH Equity, LLC, listed as its general partner. As of June 2004, the registered address for the Greenfield Group, RTH Equity, LLC, and RTH Partners, LLLP, was the same address at 2300 Glades Rd, Ste 100E, Boca Raton, Florida.

29

*1. The $ was significantly below fair market value*

133. was significantly below fair market value.

134. Contrary to customary commercial practice, rather than secure its own appraisal to

138. , Greenfield began to construct the Aventura Heart & Health Building located at 21097 NE 27th Court. It contains approximately 103,414 square feet. [37]

143. Essentially, from a real estate perspective, HCA gave to Greenfield in exchange for

[37] The Aventura Heart & Health Building (also known as and previously called the "Aventura Medical Arts Building") and identified by Miami-Dade County as 28-1234-005-0915.
[38]

Absent consideration of future physician referrals, this was not a commercially reasonable or even feasible transaction.

145. In October 2007, Greenfield sold the building, its leasehold interest, and parking easements for approximately .[39] .

[39] The property conveyed was subject to the provisions of the Declaration of Covenants, Restrictions and Easements, and Non-Exclusive Cross Parking Agreement documents. A Special Warranty Deed and a Memorandum of Assignment and Assumption of Ground Lease were recorded on or about October 9, 2007. The documents conveyed all rights, title and interests of RTH Partners in the MOB and the MOB Parcel ground lease, including all parking, utility and connector easements, to Ventas. The identities of the limited partners of RTH Partners were not disclosed in any of the recorded conveyance documents.

152. makes sense only when taking into account the value of potential referrals. As discussed below, those referrals allowed HCA to file Medicare and Medicaid claims with the government in the hundreds of millions of dollars.

e

### *3. HCA intended to induce referrals*

156. To put it another way, without consideration of the value of referrals, no private for-profit property owner would

157. One purpose of these payments was to induce illegal referrals.

160. One of HCA's competitors explained on-campus medical office buildings:

> We are in the healthcare business, not the real estate business – but we are in the real estate business. … We don't, as a company, want to own real estate… We want what happens because of the real estate. We're going to have control with the ground lease or deed restrictions ….
>
> *We're asking the CEO to schmooze the doctors and bring them to the campus*, then the next minute we're asking the CEO to go knock on the door and collect rent. One of those things is not going to get done… It's too much to ask ….

*Why Health Systems Monetize MOB*s, interview Tenet Healthcare, Vice-President of Real Estate. Ex. 11, Tenet composite.

161. HCA paid Greenfield to construct MOBs in HCA campuses with the intent that it would pass along remuneration to induce referring physicians to locate on HCA hospital campuses, including Aventura.

### *4. HCA knows Greenfield shares profits with physician tenants*

162. Greenfield should have paid HCA for a ground lease and the parking easement. Instead, HCA paid Greenfield knowing that he often shares profits with referring physicians.

163. This scheme alleged here is structurally similar to one of the schemes alleged in Relator's earlier case against HCA, *United States ex rel. Bingham v. HCA*, No. 1:08-CV-71 (E.D. Tenn.) ("*HCA-Largo*") (settled, $16.5 million).

164. In that case, Bingham details a kickback scheme at HCA's Medical Center in Largo, Florida that utilized HCA's below-market value ground lease and a free parking garage to the Greenfield Group, the same developer used by the same HCA executives for the Aventura kickback scheme.[43]

165. In *HCA-Largo*, Bingham alleged HCA indirectly paid physician-tenants for patient referrals through a covert pass-through mechanism that richly subsidized that MOB's developer – the Greenfield Group. Referring physician tenants were Greenfield limited partners in that transaction. [44]

166. Similarly, an on-campus neurologist who was a Greenfield partner, along with "every member of his group" at another HCA (f/k/a Columbia) on-campus building wrote:

> The recent sale of the building was a surprise with regard to *the amount of dollars that each partner in the building made*, which was much appreciated. Literally *every member of my group* keeps asking the same question, "when can we do another deal with the Greenfield group?"
>
> Doc. 59-7 Exhibit On-campus neurologist partner testimonial (emphasis added). http://www.greenfieldgrp.com/about_us/testimonials.html.

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[43] As in Aventura and Centerpoint [Missouri], the 99-year ground lease between HCA and Greenfield included an easement onto adjoining HCA hospital campus property, a four-story multi-million dollar garage with sufficient parking space necessary to satisfy the zoning requirements for the MOB that Greenfield then built on the ground-leased land.

The appraised value of the ground lease, which included a long-term easement onto HCA's parking facility, was approximately six to eight times the lump sum single lease payment that Greenfield paid for the 99-year ground lease.

[44] Greenfield sold the building, which included the long-term ground lease and its parking easement onto the adjacent HCA-owned parking facility. The sales price reflected the actual value of the ground lease, resulting in a substantial profit, *which was shared with the limited partner referring-physician tenants.* *Doc 52-2* Article and Press Release: Greenfield Joint Venture with Referring Physician Tenants, and website announcement: "The Greenfield Group (Boca Raton) developed this facility as a joint venture with *Diagnostic Clinic* owner/physicians."

167. Another Greenfield partner, Dr. Leff, who does not identify the building, gushes about his "opportunity of participating in a limited partnership." Dr. Leff writes: "The investment has paid off *incredibly*. … *The proceeds from the recent sale were just amazing*. … *The check I received will likely be the largest check of my life*." Doc. 59-8, Greenfield partner testimonials Dr. Leff and Dr. Johnson, at 1 (emphasis added).

168. Dr. Johnson, a Greenfield partner in Coral Springs, Fla. writes: "the recent sale of the property was phenomenal, to say the least." *Id.* at 2.

http://www.greenfieldgrp.com/data/Unsorted/Dr_Ricky_Leff_052206-62897-1.pdf.

169. Greenfield's website, referencing another project "owned by physician tenants and The Greenfield Group" confirms it regularly partners with physicians:

> We've worked with so many physicians over the years who want ownership in a project but may not have realized from the start that there are better alternatives to condominiums and stand-alone ownership of a building. We believe strongly that this is the best choice because we've successfully developed and operated dozens of them around the country.

Doc. 59-6, Margate Florida projects owned by physician tenants and Greenfield.

171. Knowing that Greenfield regularly partners with physicians, Relator sought to learn whether Greenfield partnered with the Aventura physicians in one of its many real estate limited partnerships. HCA acknowledged that it works with the Greenfield Group and that it has completed between 12 and 15 Florida-based development projects with them since 1999. Doc. 56-1, Michael Schubert Affidavit in Support of HCA's Motion for Protective Order Limiting Scope of Discovery.

172. HCA's *Amended* Development Agreement in Aventura eliminated the original agreement's prohibition against Greenfield entering into referral source transactions.

173. Relator infers this was done in contemplation of Greenfield's entering into referral source transactions. Relator infers that Greenfield benefited physician tenants in Aventura, as it did in Largo and at other campuses, and that the referring physicians benefited financially from their relationship with Greenfield without payment of adequate consideration.

174. "Most persons engaged in fraudulent action, once caught, are not brazen enough to

continue their particular form of fraudulent activity, or are creative enough to develop new means of fraud." *United States ex rel. Booker v. Pfizer, Inc*., 9 F. Supp. 3d 34, 46 (D. Mass. 2014) (critiquing as "unimaginative" the "old-scheme recidivists" who hope "that the government, with its limited investigatory resources, will fail to notice the repeat offense."). Because HCA has been caught so many, many, times, Relator expects some creativity and variation from the usual limited partner and cash flow participation kickback schemes.

176. HCA frequently uses Greenfield for its real estate projects.

- Schubert states: "HCA has completed between 12 and 15 separate and distinct development projects" with Greenfield in Florida. Doc. 56-1, Schubert Affidavit in Support of HCA Motion for Protective Order.
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- Greenfield's letterhead shows Boca Raton and Nashville (HCA's hometown). Ex. 1 at HCA_2447.

177. The identities of the limited partners of RTH Partners were not disclosed in any of the recorded conveyance documents. Documents relating to the identities of Greenfield's limited partners in this and other HCA deals are the subject of pending motions. HCA's Motion for Protective Order, Doc. 56; and Relator's Motion to Compel Production of Documents to Compel, Doc. 59.

**B. HCA compensated physicians directly with parking rights and benefits.**

179. The city of Aventura zoning laws required about 350 spaces for the proposed building of slightly larger than 100,000 square feet.[45] HCA's parking consultant advised that it

181. To construct medical office building parking,

Ex. 1, Aventura Marketing,
HCA_0002427.

182. Although Aventura Hospital charges its patients and visitors parking fees, it granted a parking easement that forever prohibits it from charging fees to referring-physician tenants, their staff, and their patients— *for no consideration whatsoever*.

184. But as shown by the July 2002 nonexclusive cross parking agreement, it did not plan to charge MOB tenants. Rather than charging commercially reasonable parking rates to the MOB tenants, and their employees, HCA transferred parking easements to Greenfield *and* to

[45] For medical office use, Aventura and Miami-Dade County require one space per 300 ft.² (3.33 spaces per thousand feet) or 333 spaces for 100,000 feet. HCA 0002566

[46] The building was slightly larger than 100,000 sq. ft., so it required more than 333 spaces, but it had a dozen or more ground parking spaces on the ground lease property.

the referring physician tenants.[47]

185. In Aventura, HCA granted this valuable 99-year easement directly to MOB tenants, their employees, and patients. [48]

186. HCA provided and continues to provide valuable parking at no charge to mob tenants and their staff from 2006 through the present.

187. Aventura hospital maintains the garage and administers MOB tenants' free parking.

188. The hospital also administered the physician tenants' validation of their patients' parking. The hospital allowed free parking for up to 60 minutes then charged $1.00 per half-hour up to 180 minutes ($5.00), and $6.00 for 180 minutes – 24 hours. Ex. 2 at Cardio 010.

189. If the hospital had charged the typical daily parking rate to office employees, an employee who worked five days per week for 50 weeks (300 days) would have paid $1,800.

190. A garage on the Palmetto hospital campus charges $75 per month per car for the medical office employees there. Had Aventura charged this rate, each employee parking on campus would have paid $900 per year ($75 x 12).[49]

191. HCA gave its medical office physicians an additional benefit: "Physician Parking" designated spaces. Because physician spaces included premium ground-floor parking, physicians saved time on the way to and from their medical offices. Ex. 2, Parking Composite, at Cardio 0009.

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[47] The July 2002 Non-Exclusive Cross-Parking Agreement, recorded on October 15, 2005, further expanded the parking rights by granting the MOB's tenants and their employees, agents, guests, customers and invitees the right to use essentially all parking spaces on the AHMC campus. The Non-exclusive Cross Parking Easement is a covenant running with the land.

[48] Doc 44-7 #7, Non-Exclusive Cross Parking Agreement, recorded in Book 278979, page 1412, Miami-Dade County Recorder; Declaration of Covenants, Restrictions and Easements. *See* pp.1, 2, 4, 8, and 9 (HCA granting "perpetual" easement at § 3.1(a)). Exhibit Non-Exclusive Cross Parking Agreement; Doc 44-8 Declarations of Covenants, Restrictions and Easements.

[49] In addition, referring physicians and their employees received this $900 – $1800 benefit per year tax-free.

192. Courts recognize that time is money for purposes of determining remuneration under the Anti-Kickback Statute, and Relator estimates that the value of the physician only premium parking benefit exceeds $4,000 per year per physician (in addition to the underlying value of parking at $900 – $1,800 per year).[50]

193. Relator estimates the value of this benefit because doctors' parking while they spend time in the hospital treating patients is generally not considered improper remuneration.

194. But medical *office* (rather than hospital) parking can be Stark and AKS remuneration.

> We have also been asked about parking spaces that a hospital provides to physicians who have privileges to treat their patients in the hospital. It is our view that, while a physician is making rounds, the parking benefits both the hospital and its patients, rather than providing the physician with any personal benefit. Thus, we do not intend to regard parking for this purpose as remuneration furnished by the hospital to the physician, but instead as part of the physician's privileges. *However, if a hospital provides parking to a physician for periods of time that do not coincide with his or her rounds, that parking could constitute remuneration*.

66 FR 856, 921 (Jan 4, 2001), referencing preamble to the January 1998 proposed rule at 63 FR 1713-1714 (emphasis supplied).

195. HCA continues the parking benefits for MOB physicians and staff to the present.

196. The estimated annual remuneration, $900-$1,800 per person, plus $4,000 per year per physician is direct remuneration for all tenant physicians who park on campus.

197. Because the Anti-Kickback statute prohibits even an *offer* of remuneration – even when it is *covert* and *in-kind* –the estimated $4,000 per year taints all claims referred by MOB tenant physicians because HCA has offered this remuneration to its on-campus referring tenant physicians while they are in their medical offices. 42 U.S.C. § 1320a-7b(b).

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[50] *See United States ex rel. Fry v. The Health Alliance of Greater Cincinnati*, 2008 WL 5282139 (S.D. Ohio Dec. 18, 2008) at *7 (finding that time granted by hospital in its cardiac center to physicians who met referral targets constituted "remuneration" under the AKS).

To value the benefit of the premium parking, Relator assumes annual physician salary of $400,000 (a minimum starting salary for a cardiologist), which averages $200 per hour or $16.67 every five minutes. Assuming a 250-day work year, the benefit total is $4,167. The five minutes assumes that premium parking saves five minutes per day that would otherwise be expended finding a spot (driving to a higher floor, rather than the first floor), taking the stairs or elevator to the ground level, returning to the third or fourth floor, and driving from a higher floor back to ground level. A ten-minute per day savings, or a higher paid physician, would realize an even greater that the $4,000 per year estimated by Relator.

### C. HCA compensated physicians by requiring below-market rents.

198. HCA took into account potential referrals

[51]

201. In 2005 per foot was below benchmark fair market value rents for medical office buildings in South Florida.

202. A study from another case shows benchmark fair market value rents for medical office buildings in the tri-county area exceeding what HCA directed Greenfield to offer to physicians:

| | |
|---|---|
| 2005 | $25 |
| 2006 | $26 |
| 2007 | $28 |
| 2008 | $29 |

Ex. 9, originally filed as 09-cv-22253-PCH as doc. 122-2 Benchmark Rents, *United States and Florida ex re.l Osheroff v. Tenet* (showing benchmark MOB rates in tri-county area).[52]

203. In 2005, a privately owned MOB on Tenet's Palmetto Hospital's campus averaged $26

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[52] In that case, the relator alleged Tenet paid kickbacks by understating the size of the offices. For example, the lease might state a fair market value rent of $18 a sq. ft., but the lease would understate the size of the office.

So a 10,000 sq. ft. office that should be paying $180,000 per year might be leased as a 9,000 sq. ft. office paying only $162,000 (9,000 ft. x $18). The difference of $18,000 ($180,000 - $162,000) was the alleged kickback.

The exhibit shows Tenet's adjusted rents, so $162,000 for 10,000 sq. ft. is shown as $16.20 ($162,000 / 10,000 sq. ft.) per sq. ft.

per foot, plus common area maintenance of approximately nine dollars.[53] In addition, that landlord charged tenants, mostly physicians and their practices, $75 per person per month for parking at a hospital in Hialeah. Hourly and daily rates were higher.

204. Ventas, the company that eventually purchased the building from Greenfield, charged

**D. HCA compensated physicians by requiring**

[53] Privately Owned MOB at Palmetto General Hospital
(*plus parking at $75/person/month*)

| Suite | Rentable ft. | Commence | yrs | $ / SF |
|---|---|---|---|---|
| 130 | 1,405 | 9/1/2004 | 10 | $27.00 |
| 510 | 2,800 | 6/1/2005 | 5 | $22.00 |
| 131 | 2,192 | 7/1/2005 | 10 | $28.00 |
| 514 | 1,900 | 8/1/2005 | 7 | $22.00 |
| 102 | 6,069 | 8/1/2005 | 10 | $30.00 |
| 515 | 3,200 | 11/1/2005 | 10 | $24.00 |
| 405 | 900 | 11/1/2005 | 5 | $25.00 |

209. After Greenfield sold the building to Ventas, it, of course, charged market value rates,

210. Lower rents for referring physicians constitute a violation of the Anti-Kickback Statute and a violation of the Stark statutes as constituting "indirect" compensation to referring physicians.

**E. HCA directed higher referrers.**

212. At least one purpose of a tenant improvement allowance is to induce the physician-tenants to lease on campus where they would then make referrals to the hospital.

213. Although the use of tenant improvement allowances is common, hospitals may use overly generous or unnecessary allowances to provide remuneration to physicians with the intent of inducing or rewarding patient referrals.

216. A determination of a tenant improvement allowance's commercial reasonableness for actual improvements is often made when evaluating the particular improvements required by a particular tenant. One tenant may require lead-lined walls, reinforced load-bearing floors for

heavy machinery, and extensive plumbing, while another might require no more than non-medical office space.

217. The table below shows tenant improvement allowance ("TI") per usable sq. ft.

218. Although the picture here is not as clear as with rents, the allowances also suggest more incentives flowed towards the better patient referrers.

220. The additional suggests that one of the purposes of the richer tenant improvement allowance was to provide a financial incentive to potential referring-physician tenants.

**F. HCA directly paid**

233. Because HCA and Aventura Hospital are no strangers to illegal cost shifting, having been previously punished for using devious mechanisms to circumvent the law, this scheme was necessarily more sophisticated and covert than its previous cost-shifting schemes.[61]

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[60] The determination of the precise amount of common area attributable to this scheme may be beyond relator's ability to reconstruct. *See* guidance on common area calculations for corridors from one building to mechanicals (such as fire pumps) stored in another building. Questions 20 at http://www.bomaoeb.org/files/BOMA26QAOBMeasure%20.pdf

[61] *See, U.S. ex rel Marine v. Columbia Aventura Medical Center, et al.,* 00-1845 (RCL) (part of 01-MS-50 (RCL)) D.D.C., originally filed as 97-4368 CIV LENARD (S.D. Fla.). Mr. Marine, an HCA cost accountant, alleged shifting of non-reimbursable costs between

**G. HCA compensated physicians directly with**

234. "Giving a person an opportunity to earn money may well be an inducement to that person to channel potential Medicare payments towards a particular recipient." *United States v. Bay State Ambulance and Hosp. Rental Co.*, 874 F.2d 20, 26 (1st Cir. 1989).

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departments and among HCA's hospitals, including Aventura hospital, formerly known as Columbia Aventura Medical Center. Only two years before it planned shifting scheme, HCA settled *Marine* for $950,000 as part of HCA's $631 million civil settlement. http://www.justice.gov/archive/opa/pr/2003/June/03_civ_386.htm

242. HCA received no payment from physician tenants for conveying these valuable rights, from which it can be inferred that the rights constituted remuneration in exchange for future referrals.

243. This is precisely the result. HCA's 2005 Medicare claims based on referrals from

## V. HCA Violated its Corporate Integrity Agreement (CIA)

247. In December 2000, HCA entered into a Corporate Integrity Agreement (CIA) with the U.S. government because of significant misconduct and violations of the Medicare and Medicaid laws.[67]

248. The agreement expired in January 2009.

249. The CIA mandated specific affirmative duties, including employee training, audits, reporting of "reportable events" to the OIG, annual compliance reports, *id*. at 28, and specific work plans, including a Physician Relationships Workplan. *Id*. at 86.

250. As part of the Physician Relationships Workplan, the CIA required HCA to identify physician relationships with the greatest risk of noncompliance including examination of:

> leases of buildings where physicians have offices ("Medical Office Building" or "MOB" leases) and *other payments to physicians* … (collectively, all of the above referred to as "physician relationships").

*Id*. at 87 (emphasis added).

251. OIG required and HCA agreed that all medical office buildings be managed by professional *independent* third-party managers. *See* subsection III (B)(1)(b). *Id.* at 88.

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66 Relator's estimate is inferred from CMS data for 2012 and 2013.

67 *See* Corporate Integrity Agreement Between the Office of Inspector General of the Dep't of Health & Human Servs. and HCA–The Healthcare Company, *available at* http://oig.hhs.gov/fraud/cia/agreements/the_hc_co_121400.pdf

252. One purpose behind the requirement for independent managers is that when a hospital controls or influences a medical office building it has the ability to provide remuneration to physicians in the form of below-market rental rates or other lease benefits. "[W]here an entity leases space to a physician at a rental price that is substantially below fair market value, *it may raise the inference that the below market rent was in exchange for future referrals*, including referrals *made beyond the expiration of the lease.*" 72 Fed. Reg. 38122, 38183 (emphasis added).

253. The CIA mandated internal audits of "payments to physicians without documentation of services rendered." *See* subsection III (B)(1)(c). *Id.*

254. HCA agreed to have the independent property managers certify annually various compliance requirements to HCA's real estate department and forward them to HCA's Internal Audit Department ("IAD"). *See* subsection III (B)(1)(b). *Id.*

255. The *Physician Relationships Facility Level Compliance Process* required that "property manager reports certif[y] that all medical office buildings' rents were consistent with fair market value, [and] that leases would be commercially reasonable even if no referrals were made between the parties." *Id*.

256. Any MOB leases that a property manager could not certify as Fair Market Value, commercially reasonable were to have been forwarded to the legal department for review and for any necessary corrective action. *Id*.

257. The CIA mandated internal audits of payments to physicians without documentation of services rendered. *See* subsection III (B)(1)(c). *Id.*

258. HCA agreed to annually report to the IAD all physician relationships that constituted reportable events as determined either by the legal department, the IAD, or the Legal IRO (Independent Review Organization).[68]

259. HCA's Legal IRO was to have been given the opportunity to review *all* of the company's physician relationship policies to ensure compliance with the Anti-Kickback and the Stark Statutes. *See* subsection II. *Id.* at 86.

260. While still under the CIA, HCA planned and implemented payments via Cash Flow Participation Agreements (CFPAs) or other mechanisms to third party developers' physician

[68] The Physician Relationships Workplan required a public accounting IRO ("PA IRO") and/or a law firm IRO ("Legal IRO").

tenants in Independence, Missouri and Aventura, Florida.

261. HCA controlled the third-party medical office property managers and undermined their independence by controlling the ground leases, rents, type of tenants allowed and prohibited, and types of activities allowed and prohibited.

262. To avoid scrutiny, HCA characterized a *de facto* sale as a "ground lease."

263. For example, with Centerpoint Hospital, the Development Agreement makes clear that the Ground Lease to Tegra was a *de facto* sale because it mandated an option to acquire fee simple interest in the land and perpetual rights to the parking easement for a nominal $100. Development Agreement, Exhibit H, ¶1(a) (last sentence).

264. Structuring the transaction as a ground lease instead of a sale gave HCA greater justification for controlling all material terms that should have been controlled by Tegra as property manager. *See* Development Agreement, Exhibit H: leases' terms,¶ 4(c)(8) and ¶14; rates, ¶ 14; tenant improvement allowances, ¶ 14; all of which was mandated to remain confidential from the OIG, ¶13.

265. In direct contravention of the CIA's objectives and purposes, HCA ensured through its contractual restrictions that the MOBs were filled with referring tenants. Through this mechanism, HCA eliminated competing tenants and competing activities.

266. For example, HCA's Declaration of Covenants, Restrictions and Easements controlled Tegra's leases by restricting the types of tenants and the business they allowed to conduct in its offices and restricted competing businesses. *Exhibit D, p. 55* "Hospital Parcel Owner Consent" to Tegra and Independence Women's Clinic for various diagnostic procedures.

267. HCA required that this control not be disclosed. Exhibit H, Development Agreement, ¶ Confidentiality of Agreements, ¶ 13.

268. The failure to satisfy a CIA's reporting obligation paired with a CIA's mandatory Certification of Compliance can form a basis for FCA liability. *See United States ex rel. Matheny v. Medco Health Solutions*, 671 F.3d 1217, 1224 (11th Cir. Fla. 2012).

269. Based on the above, on information and belief, HCA falsely certified compliance in one or more of its CIA reports.

## VI. HCA Filed False Claims.

### A. HCA and its Aventura and Centerpoint hospitals filed claims with the government.

270. HCA and its Aventura and Centerpoint hospitals filed claims for Medicare or Medicaid reimbursement with the U.S. government.

271. In the years 2008 through 2010 for example, HCA reported to the SEC that Medicare provided 30% of its revenue and Medicaid provided 10% (plus or minus 2%).

272. For each of those years, HCA made approximately $30 billion in revenue. Using the 30% figure reported by HCA, Medicare and Medicaid payments to HCA accounted for approximately $9 billion per year.

273. HCA reported to the SEC that it bills the government for nearly twice as many outpatient procedures as inpatient.

### B. Aventura Hospital Claims.

274. Aventura Hospital provides inpatient and outpatient hospital services to patients covered by federal and state sponsored health care programs, including Medicare, Medicaid, and Tricare.

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[69] On January 19 HCA provided claim data in an
to Relator's First for Interrogatories (propounded November 7, 2015). *The data shows*

Not all of these claims are at issue in this case. The parties will work to refine this figure to identify the claims that would be tainted if Relator proves his allegations.

- Suite 300, Aventura Endocrine Associates: Drs. Ira Feldman, Timothy Elton Shapiro, Leonard Thaler.
- Suite 400, Florida Heart and Health: Drs. Alan Ackerman, Steven Gorin, Anita Jones.
- Suite 580, Aventura Institute of Cardiovascular Wellness: Dr. Lawrence Berger.
- Suite 570, Cardiovascular Consultants of South Florida: Dr. Eugenio Bricio.

278. The Stark Statute defines "referral" by a physician to be "the request or establishment of a plan of care by a physician which includes the provision of designated health services." 42 U.S.C. § 1395nn (h)(5)(A). Stark requires providers to submit information with claims that identify "referring" physicians. 42 U.S.C. § 1395l(q). Given the broad statutory and regulatory definition of referral, physicians not listed as either the attending or operating physician may also qualify as one of several "referring physicians." Each of the physicians identified in HCA's more than claims as "Admt Dr," "Attnd Dr,": or "Surgn"qualifies as a *referring physician* as that term is defined by the Stark Statute. *See, e.g.* ex 14.

279. In 2012, Aventura Hospital served 7,366 Medicare inpatients with an average charge of $65,860 per patient.[70]

280. Aventura Hospital's inpatient Medicare revenue totaled approximately $485 million (7,366 patients multiplied by $65,860) in 2012.

281. Medicare outpatient charges are not included in the $485 million.

282. This $485 million of inpatient Medicare revenue received by Aventura is 28% of Aventura's $1.8 billion 2012 revenue, a percentage consistent with the 30% reported in HCA's 10K.

283. In 2012, Centerpoint Hospital served 4,658 Medicare inpatients with an average charge of $64,193 per patient, totaling $299 million of Medicare charges out of its total

[70] The American Hospital Directory compiles financial data from hospital cost reports for the cost reporting period ending December 31, 2012. http://www.ahd.com/free_profile.php?hcfa_id=47508d70e38e04b305bc11c706fc6802&ek=f10bf02d44db2343e7e51f1ded190646

revenue of $1.270 billion.[71]

### C. The Tenant Physicians Refer Medicare Patients.

284. Many hospital referrals from medical office buildings' physicians are made to the hospitals adjacent to their offices because they are easily accessible for hospital visits and oversight.

285. CMS publicly reports the numbers of referrals for all Medicare providers.

286. For example, with respect to Medicare referrals to HCA's Centerpoint hospital, CMS reported for Dr. Margo Lynn Block, NPI 1871672287 (Centerpoint Suite 105), 813 referrals in 2009; 1178 in 2010; and 633 referrals in 2011.[72]

287. CMS reports referral counts for the following physicians at Centerpoint Medical Office Building whose suite numbers are the same as suite numbers that enjoyed the remuneration from Cash Flow Participation Agreements: [73]

**Sample Referral Counts 2009**

| Suite | # Referrals | NPI | |
|---|---|---|---|
| 100 | 426 | 1710910922 | Surgery Center of Independence, LP, |
| 100 | 200 | 1679674220 | John A. Mattoni, Jr., M.D. |
| 105 | 813 | 1871672287 | Margo Lynn Block, D.O. |
| 230 | 175 | 1295885853 | Robert Frederic Greiner II, D.O. |
| 300 | 35 | 1619970126 | Richard K. Gutknecht, M.D. |
| 300 | 26 | 1114921061 | Timothy Allen Hall, M.D. |
| 300 | 20 | 1235131434 | Michell Rene Lemberger, M.D. |
| 310 | 42 | 1487657284 | Terry V. Morris, M.D. |
| 310 | 39 | 1225031909 | Nathan T. Wegner, M.D. |
| 310 | 21 | 1164425849 | Thomas R. Dowd, M.D. |
| 310 | 11 | 1295737559 | Stephanie J. Carpino, M.D. |
| 325 | 688 | 1710033493 | Jared B. Smith, M.D. |
| 325 | 450 | 1790738300 | Pascal Edward Spehar, M.D. |
| 400 | 1,219 | 1124099684 | Larry A. Rosen, M.D. |
| 415 | 33 | 1194778910 | Mark Ray Killman, M.D. |

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71 American Hospital directory, above.

72 CMS data compiled by Medical Schedule, Inc. http://www.npidashboard.com/

73 Referrals to Centerpoint Medical Center of Independence, LLC, NPI 1942247044. CMS data compiled by Medical Schedule, Inc. http://www.npidashboard.com/

NPI (National Provider Identifier) is a unique identification number for covered health care providers. http://www.cms.gov/Regulations-and-Guidance/HIPAA-Administrative-Simplification/NationalProvIdentStand/index.html?redirect=/NationalProvIdentStand/

**Referral Counts 2010**

| Suite | # Referrals | NPI | |
|---|---|---|---|
| 100 | 530 | 1710910922 | Surgery Center of Independence, LP |
| 105 | 1,178 | 1871672287 | Margo Lynn Block, D.O. |
| 230 | 441 | 1295885853 | Robert Frederic Greiner II, D.O. |
| 300 | 33 | 1114921061 | Timothy Allen Hall, M.D.. |
| 310 | 20 | 1225031909 | Nathan T. Wegner, M.D. |
| 325 | 648 | 1710033493 | Jared B. Smith, M.D. |
| 325 | 539 | 1790738300 | Pascal Edward Spehar, M.D |
| 415 | 31 | 1194778910 | Mark Ray Killman, M.D. |

**Referrals Count2011**

| Suite | # Referrals | NPI | |
|---|---|---|---|
| 100 | 576 | 1710910922 | Surgery Center of Independence, LP. |
| 100 | 350 | 1679674220 | John A. Mattoni, Jr., M.D. |
| 105 | 633 | 1871672287 | Margo Lynn Block, D.O. |
| 230 | 592 | 1295885853 | Robert Frederic Greiner II, D.O. |
| 300 | 57 | 1114921061 | Timothy Allen Hall, M.D. |
| 300 | 53 | 1548264401 | Robert Thomas Caffrey, M.D. |
| 300 | 40 | 1619970126 | Richard K. Gutknecht, M.D. |
| 300 | 34 | 1346441342 | Alisa R. Ash, M.D. |
| 310 | 55 | 1487657284 | Rerry V. Morris, M.D. |
| 325 | 557 | 1710033493 | Jared B. Smith, M.D. |
| 325 | 478 | 1790738300 | Pascal Edward Spehar, M.D. |
| 400 | 3,553 | 1124099684 | Larry A. Rosen, M.D. |
| 400 | 1,203 | 1164497525 | Ibrahim A. Mourad, M.D. |
| 415 | 36 | 1194778910 | Mark Ray Killman, M.D. |

288. Centers for Medicare & Medicaid Services ("CMS") reports 83 distinct Medicare providers at the two Medical Office Buildings in 2012. Exhibit C.

289. In 2012, CMS reimbursed those providers for "initial hospital visits" for over 4,572 unique Medicare beneficiaries. *Id.*[74]

290. The physician who first sees a patient during an "initial hospital visit" is often that patient's referring physician for that procedure.

291. A very high percentage of these 4,572 patients were referred to the hospitals by these on-campus physician tenants given that the hospitals are adjacent to their offices and easily accessible for hospital visits and oversight.

[74] In addition, CMS reports it paid those providers for 7,674 "subsequent care" visits and 996 "hospital discharge day" visits. Ex. C, pp. 3 - 6.

292. On information and belief, the 12,024 Medicare inpatients (Aventura's 7,366 patients plus Centerpoint's 4,658 patients) in Aventura and Centerpoint hospitals in 2012 included many of the 4,572 unique Medicare beneficiaries first seen by physician tenants who have offices in the MOBs adjacent to those hospitals.

293. Assuming the 4,572 unique Medicare beneficiaries had average charges of $65,000 each, the total charges for these inpatient Medicare beneficiaries was $297 million in Medicare charges. Of this, a substantial percentage of these patients were referred by their physicians to the hospitals down the hall from the doctors' offices, rather than to hospitals elsewhere.

294. The charges include "designated health services" as such term is used at 42 U.S.C. § 1395nn(a)(a).

295. On information and belief, the tenant physicians also referred Medicare outpatient and Medicaid patients to these two hospitals for all years relevant to this Complaint.

296. Relator believes this because he believes that the reported figures from Aventura and Centerpoint hospitals do not differ greatly from HCA's statistics with respect to Medicare revenue from *outpatient* referrals and *Medicaid* referrals.

297. Outpatient referrals and Medicaid referrals resulted in payments from the U.S. and the State of Florida in amounts exceeding tens of millions of dollars per year.

298. While the inpatient Medicare charges of $297 million and other figures above relate to 2012, the order of magnitude was not materially different in earlier years.

299. Relator extrapolates for earlier years from these 2012 figures that the amount of Medicare and Medicaid reimbursements generated by physician tenant referrals exceeded $200 million per year from tenants in the two on-campus medical office buildings.

300. Consequently, HCA presented or caused to be presented Medicare and Medicaid claims based on referrals from tenants in the two on-campus medical office buildings as discussed in greater detail below.

### D. HCA Submitted False Claims.

301. HCA has submitted, and caused others to submit, to the federally sponsored health-care programs, including Medicare, TriCare and Medicaid, false or fraudulent claims for reimbursement and records in support of such false claims for the services HCA provided to the beneficiaries of such health care programs that had been referred to HCA unlawfully.

302. HCA had knowledge or acted in reckless disregard of the fact that referring-physician tenants received compensation that took into account the volume or value of referrals.

303. Defendant, HCA, through HCA's wholly owned entities, has presented or caused to be presented these claims with actual knowledge of their falsity, or in deliberate ignorance or reckless disregard that such claims were false and fraudulent.

304. Under the False Claims Act, such claims were false and/or fraudulent because Defendant HCA was not entitled to be paid for them. Defendant was not entitled to be paid for these claims because it forfeited the right to bill and was not entitled to bill any federally sponsored health- care program for items and services that it provided to the patients referred to it in violation of the AKS and the Stark statute.

305. HCA's long-history of paying fines, civil damages, and other penalties on account of past kickbacks and self–referrals under both AKS and Stark show that HCA has actual knowledge of the requirements of both statutes.

306. In addition to the knowing submission of false claims in violation of the False Claims Act, Defendant has also knowingly and willfully made, used, or caused to be made or used, false records or statements (i.e. the false certifications and representations on claim forms or their electronic equivalents and cost reports falsely attesting to compliance with the Stark statute and the AKS) which are material to the false or fraudulent claims paid or approved in violation of the False Claims Act.

307. By virtue of the false or fraudulent claims knowingly and or willfully made, used, or caused to be made or used by Defendant and the false records or false statements knowingly made or caused to be made by Defendant that are material to the false claims that were paid or approved, the United States has suffered damages and therefore is entitled to statutory damages under the False Claims Act, to be determined at trial, plus a civil penalty for each violation.

### E. HCA designed, implemented and concealed the scheme.

308. HCA corporate office, through its real estate department, designed and implemented the scheme in Missouri and in Aventura, Florida. The document trail shows HCA corporate office's hands-on involvement at every step of planning and marketing. Documents show HCA Real estate executives Howard Patterson (based in Nashville),

and others' involvement in planning and implementing the scheme. Ex. 1

Aventura Marketing Composite.

309. The scheme is structurally similar to one of the schemes alleged in Relator's earlier case against HCA. *United States ex rel. Bingham v. HCA*, No. 1:08-CV-71 (E.D. Tenn.) (settled for $16.5 million). [75]

310. With respect to the implementation of HCA's scheme at Centerpoint, all documents point to HCA corporate:

a. The Corporate Certificate authorizing Midwest Division – IRHC, LLC's Development Agreement with Tegra states that HCA's Midwest Division – IRHC, LLC, holds its authorized meetings in Nashville Tennessee. Section 2, Place of Meeting, Section 3, Meetings, June 21, 2005.

b. The medical office building's Development Agreement, Exhibit H, also shows HCA's address as One Park Plaza, Nashville, TN 37203 and required all notices to be sent to it "c/o HCA," same address, Attn: Mr. Tom Ramsey, Real Estate Department fax number 615-344-2137.[76]

c. The June 27, 2005 Ground Lease to Tegra directed communications to be sent to the "Landlord," c/o HCA, Inc., One Park Plaza, Nashville, TN, Attn: Howard K. Patterson, Vice President, Real Estate, fax 615-344-2137.

d. The April 10, 2007 Ground Lease First Amendment directed communications to be sent to the "Landlord," c/o HCA, Inc., One Park Plaza, Nashville, TN, Attn: Mark

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[75] At the Largo Medical Center in Largo, Florida, HCA leased hospital campus property to a limited partnership organized by Greenfield, a MOB developer. Greenfield's limited partners were the referring physician tenants.

Just as in Aventura and Centerpoint, the 99-year ground lease between HCA and Greenfield included an easement onto adjoining HCA hospital campus property, a four-story multi-million dollar garage with sufficient parking space necessary to satisfy the zoning requirements for the MOB that Greenfield then built on the ground leased land.

The appraised value of the ground lease which included the long term easement onto HCA's parking facility was approximately six to eight times the lump sum single lease payment that Greenfield paid for the 99-year ground lease.

Greenfield subsequently sold the building, which included the long term ground lease and its parking easement onto the adjacent HCA-owned parking facility. The sales price reflected the actual value of the ground lease thus resulting in a substantial profit, which was shared with the limited partner referring physician tenants.

[76] HCA's Nashville-based Real Estate Department still uses fax number 615-344-2137. http://www.commercialiq.com/jsp/agents/agent_overview.jsp?agentID=388660

Kimbrough, Vice President, Real Estate, fax number 615-344-2137.

e. The Space Lease directed communications to Independence Regional Health Center c/o HCA Midwest division in Kansas City with a copy to HCA's V.P. Real Estate, Howard K. Patterson, at HCA corporate in Nashville. Ex. E, p. 20.

f. The Declaration of Covenants, Restrictions and Easements gives an address "c/o Vice President for Real Estate, HCA Inc., One Park Plaza, Nashville, TN 37203," p. 21, relating to the easements given to Tegra. Howard K. Patterson, HCA's Vice-President of Real Estate, signed the document, which was witnessed by a Tennessee notary.

311. With respect to the implementation of HCA scheme at Aventura Hospital, documents also point to HCA corporate liability.

312. Howard K. Patterson signed as V.P. of Miami Beach Healthcare Group, Colombia Hospital Corp of Miami Beach, with its registered principal address listed as One Park Plaza, Nashville.

a. Non-Exclusive Cross-Parking Agreement, July 10, 2002, signed by Howard K. Patterson;

b. Aventura City Resolution dated Feb 2003 signed by Howard K. Patterson, Nashville, for applicant;

c. Memo of (ground) Lease Agreement, April 25, 2005, signed by Howard K. Patterson;

d. Declaration of Covenants, Restrictions and Easements, April 4, 2005 signed by Howard K. Patterson;

e. Declaration of Connector Easements dated April 8, 2005, signed by Howard K. Patterson; and

f. Memo of Lease Agreement (HCA leased space in MOB) dated 4/11/05 signed by Howard K. Patterson.

313. As noted above, in Largo, Florida, HCA implemented the same scheme. It subsidized an on-campus ground lease, including a valuable parking easement for a third-party developer, who in turn passed on the profits to referring physician tenants. In Largo, the pass-through to physicians was accomplished through limited partnership agreements, rather than through cash flow participation agreements as in Centerpoint. Nonetheless, for referring physicians the result was the same: Hundreds of thousands of windfall dollars in their pockets.

314. Although it does not identify the properties, HCA's SEC report acknowledges that

*certain of their arrangements with physician referral sources do not qualify for safe harbor protection*:

> We have a variety of financial relationships with physicians and others who either refer or influence the referral of patients to our hospitals and other health care facilities, including employment contracts, leases, medical director agreements and professional service agreements. We also have similar relationships with physicians and facilities to which patients are referred from our facilities. … While we endeavor to comply with the applicable safe harbors, *certain of our current arrangements, including joint ventures and financial relationships with physicians and other referral sources* and persons and entities to which we refer patients, *do not qualify for safe harbor protection*.
> Ex. 13 Page 83, HCA SEC Form S1 filed March 9, 2011 (emphasis supplied).

315. Under the heading "Stark Law" it similarly acknowledges: "We cannot assure that every relationship complies fully with the stark law." *Id*.[77]

316. At all times herein alleged, HCA knew that AHMC and their hospitals were not permitted to submit claims for payment to Medicare, Medicaid, or other federally sponsored health care programs for services provided to any patient who had been referred by a physician with whom HCA and AHMC had a financial relationship. At all times herein mentioned, the Aventura Hospital submitted periodic cost reports to Medicare and Medicaid that certified that it was in compliance with the provisions of the Stark Statute and the AKS.

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[77] The SEC disclosure may have been driven by shareholder litigation. On Nov. 5, 2015, HCA announced it agreed to pay $**215 million** to settle a shareholder lawsuit, alleging, in part, that HCA encouraged unnecessary cardiac procedures. *Schuh v HCA Holdings, Inc* 3:11-cv-01033 M.D. Tenn. (Sharp, J.) *See* http://www.reuters.com/article/hca-holdings-shareholder-settlement-idUSL1N12Z22920151104#X8HR0dfbMfDWsBWu.97

## VII. Specific Counts

### A. Count A: False or Fraudulent Claims (Kickbacks)

Plaintiff repeats and realleges paragraphs above as if fully set forth herein.

#### *1. HCA presented or caused false or fraudulent claims*

317. From the execution of the first MOB lease to the present, Defendant presented or caused to be presented false or fraudulent claims to the United States for payment or approval in violation of the False Claims Act, 31 U.S.C. § 3729(a)(1) (1986), amended by 31 U.S.C. § 3729(a)(1)(A) (2009).

318. The claims were false or fraudulent because they were tainted by kickbacks that Defendant knowingly and willfully provided to referring physicians in the form of free and/or reduced rent for space for parking and other purposes, at least one purpose of which was to induce referrals paid for by the Medicare program, in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b), (g).

319. Claims for payment to federally financed healthcare systems which result from unlawful referrals in violation of the Anti-Kickback Statute are false claims.

320. Compliance with the Anti-Kickback Statute is a condition of payment of Medicare, Medicaid, and other federally funded health care programs.

321. By providing remuneration to referring physicians, Defendant violated the Anti-Kickback Statute, which in turn resulted in false claims for payment.

#### *2. HCA's false records or statements*

322. From the execution of the first MOB lease to the present, Defendant knowingly made, used, or caused to be made or used, false records or statements that were material to false or fraudulent claims for payment or approved by the United States in violation of the FCA, 31 U.S.C. § 3729(a)(2) (1986), amended by 31 U.S.C. § 3729(a)(1)(B) (2009).

323. The false records or statements appeared on CMS Forms, described more particularly under the heading **Defendants filed False Claims,** above—where Defendants falsely certified to the United States, *inter alia*, that their claims for Medicare payment were true, accurate, and complete, and falsely certified to the United States, *inter alia*, compliance with all

"Medicare laws, regulations and program instructions . . . including, but not limited to, the Federal anti-kickback statute."

324. The false records or statements were material to Defendants' claims for Medicare payment because Medicare would not have paid the claims absent the records or statements.

### B. Count B: False or Fraudulent Claims (Stark)

Plaintiff repeats and realleges paragraphs above as if fully set forth herein.

#### *1. HCA presented or caused false or fraudulent claims*

325. From the execution of the first MOB lease to the present, Defendant presented or caused to be presented false or fraudulent claims to the United States for payment or approval in violation of the FCA, 31 U.S.C. § 3729(a)(1) (1986), amended by 31 U.S.C. § 3729(a)(1)(A) (2009).

326. The claims were false or fraudulent because they were tainted by Stark Statute violations resulting from Defendant's financial relationship with referring physicians who had offices in the on-campus medical office buildings. 42 U.S.C. § 1395nn(a), (b).

327. Compliance with the Stark Statute is a condition of payment of Medicare, Medicaid, and other federally funded health care programs.

328. Claims for payment to federally financed healthcare systems which result from unlawful referrals in violation of the Stark Statute are false claims.

329. By entering into compensation arrangements with referring physicians, Defendant violated the Stark Statute, which in turn resulted in false claims for payment.

#### *2. HCA's false records or statements*

330. From the execution of the first MOB lease to the present, Defendant knowingly made, used, or caused to be made or used, false records or statements that were material to false or fraudulent claims for payment or approved by the United States in violation of the FCA, 31 U.S.C. § 3729(a)(2) (1986), amended by 31 U.S.C. § 3729(a)(1)(B) (2009).

331. The false records or statements appeared on CMS Forms, described more particularly under the heading **HCA filed False Claims, above** —where Defendant falsely certified to the United States, *inter alia*, that its claims for Medicare payment were true, accurate, and

complete, and falsely certified to the United States, *inter alia*, compliance with all "Medicare laws, regulations and program instructions . . . ."

332. The false records or statements were material to Defendants' claims for Medicare payment because Medicare would not have paid the claims absent the records or statements.

### C. Count C: Claim for Florida False Claims Act

Plaintiff repeats and realleges the preceding paragraphs as if fully set forth herein.

333. Since approximately April 2005, HCA provided illegal remuneration to physician tenants of the Aventura MOB who have referred large volumes of patients with health care coverage from Florida Medicaid to the Aventura Hospital which, in turn, has submitted and caused to be submitted claims for payment to Florida Medicaid in the hundreds of thousands, if not millions of dollars, for services provided to these referred patients.

334. Defendant, HCA, through the Aventura Hospital, has presented or caused to be presented these claims with actual knowledge of their falsity, or in deliberate ignorance or reckless disregard that such claims were false and fraudulent. Under the Florida False Claims Act, Stat. Ann. §68.081 *et seq.*, such claims were false and/or fraudulent because Defendant HCA was not entitled to be paid for them. It was not entitled to be paid for these claims because HCA forfeited the right to bill and was not entitled to bill any federally sponsored health care program, including Florida Medicaid, whose funding is partly derived from the federal government, because it had provided and was providing unlawful remuneration to the MOB tenant physicians and/or physicians, intending that remuneration to induce patient referrals in violation of the AKS.

335. In addition to the knowing submission of false claims in violation of the Florida False Claims Act, Defendant has also knowingly made, used, or caused to be made or used, false records or statements (i.e. the false certifications and representations on claim forms or their electronic equivalents and cost reports falsely attesting to compliance with the AKS) to get false or fraudulent claims paid or approved in violation of the FFCA.

336. By virtue of the false or fraudulent claims knowingly made, used, or caused to be made or used by Defendant and the false records or false statements knowingly made or caused to be made by Defendant to get false claims paid or approved, the State of Florida has suffered damages and therefore is entitled to statutory damages under the Florida False Claims Act, to be determined at trial, plus a civil penalty for each violation.

## VIII. Conclusion and Prayer for Relief

337. Because of Defendant's false or fraudulent claims, the United States and the State of Florida has suffered damages.

338. Defendant is liable to the United States for treble damages under the FCA, in an amount to be determined at trial, plus a civil penalty of $5,500 to $11,000 for each false claim presented or caused to be presented by Defendant.

WHEREFORE, *Qui Tam* Plaintiff, Thomas Bingham, for the United States, for the State of Florida, and for himself, prays as follows:

A. Against Defendant, treble damages and civil penalties up to the maximum permitted by law, for the maximum *qui tam* percentage share allowed pursuant to §3730(d) of the False Claims Act, and for attorney's fees, costs and reasonable expenses; and

B. For any and all other relief to which the plaintiffs may be entitled.

Plaintiffs request trial by jury.

Respectfully submitted,

*/s/ Jonathan Kroner*
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Attorneys for *Qui Tam* Plaintiff
Thomas Bingham

## IX. Exhibit list

All Exhibits are bookmarked to Bates numbers, dates, and or descriptions, to facilitate finding referenced matters. All highlights were added by Plaintiff Relator to facilitate Court's review.

1 Composite Aventura marketing

2. Composite parking

3.

4.

5.

6 Deposition Schubert

7 Deposition Greenfield

8 Deposition Carbone

9 Benchmark Rents, originally 09-cv-22253-PCH doc. 122-2, *United States and Florida ex rel Osheroff v. Tenet*

10 Composite

11 Composite Tenet Composite

12 Composite

13 SEC Form S-1 Extract

14 Aventura Sample Claim Data

15

## CERTIFICATE OF SERVICE

I certify that on the date stamped above I electronically filed this document with the Clerk of the Court using CM/ECF to be served on all counsel of record.

/s/ *Jonathan Kroner*