

Russell Kolsrud, State Bar No. 004578 (PAN 80877)
Ryan Lorenz, State Bar No. 019878 (PAN 86014)
Josh McClatchey, State Bar No. 025622 (PAN 87867)

CLARK HILL PLC

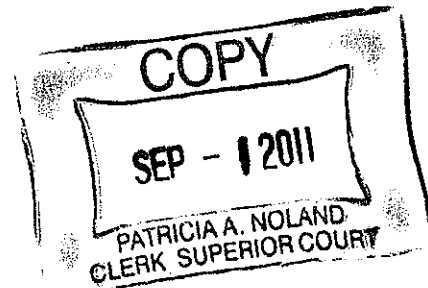
14850 North Scottsdale Road, Suite 500

Scottsdale, Arizona 85254

Telephone: (480) 684-1100

Facsimile: (480) 684-1199

Email: TPruitt@ClarkHill.com



Attorneys for Plaintiff Southeastern Arizona Behavioral Health Services, Inc.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

SOUTHEASTERN ARIZONA
BEHAVIORAL HEALTH SERVICES, INC.,
an Arizona non-profit corporation,

Plaintiff,

v.

COMMUNITY PARTNERSHIP OF
SOUTHERN ARIZONA (CPSA), INC., an
Arizona non-profit corporation; NEAL CASH
and JANE DOE CASH, husband and wife;
CHARLES ANDRADE and JANE DOE
ANDRADE, husband and wife; BANNER
HEALTH, an Arizona non-profit corporation;
TMC HEALTHCARE, an Arizona non-profit
corporation; BEHAVIORAL HEALTH
COALITION OF SOUTHERN ARIZONA,
INC., an Arizona non-profit corporation

Defendants.

Case No. C20114835

**FIRST AMENDED
COMPLAINT**

(Unclassified Civil – Other:
Statutory claims for release of
corporate records and for corporate
dissolution pursuant to A.R.S. §§
10-11604 and 10-11430)

(Assigned to Honorable Jan E.
Kearney)

Plaintiff Southeastern Arizona Behavioral Health Services, Inc., an Arizona non-profit corporation (“SEABHS”), for its first amended complaint, alleges as follows:

INTRODUCTION

1. SEABHS is a community-based provider of a continuum of care and services for consumers enrolled with CPSA, including but not limited to, services and treatment of individuals diagnosed with a serious mental illness, children eligible for

benefits under the Children's Health Insurance Plan of Title XXI of the Social Security Act ("CHIP"), prescription and administration of psychotropic and other medications, comprehensive crisis services, substance abuse services, screening and civil commitment assessments and evaluations, and coordination of care with primary care physicians or specialists relating to non-behavioral health care issues (co-morbidity conditions) for Southeastern Arizona.

2. SEABHS was instrumental in creating Defendant, Community Partnership of Southern Arizona (CPSA), Inc. ("CPSA") as a non-profit corporation in 1995 for the sole purpose of contracting with the State to coordinate the delivery of a continuum of behavioral health services to qualifying and eligible persons in Cochise, Graham, Greenlee, Santa Cruz and Pima Counties. Today, CPSA serves only twenty percent (20%) of its former geographic area, operates its business as a for-profit enterprise and wants to oust SEABHS as a one-third member and owner of CPSA without paying SEABHS its pro-rata share of CPSA's value.

3. In October 2010, CPSA, through its legal counsel, attempted to oust SEABHS as a CPSA member "because of the loss of GSA3 [80% of CPSA's service area] it will be necessary to amend and restate the CPSA Articles of Incorporation." The ouster of SEABHS was attempted by the CPSA lawyer and CEO without a "noticed" Member Meeting.

4. These acts triggered a SEABHS investigation into CPSA's manner of conducting business. SEABHS learned that over the past three (3) fiscal years, CPSA reported income of \$839,418,370 as "grants and contributions." In fact, 99% of CPSA's income came as program service revenue under CPSA's contract with the State. CPSA's misrepresentation of its revenue source was designed to elude taxation, and maintain its 501(c)(3) tax-exempt status and, at the same time, line its pockets with retained earnings.

5. SEABHS learned that CPSA spent money like other commercial for-profit business operations. Over the past three fiscal years, CPSA's Chief Executive Officer

1 gave away \$1,711,585 of the taxpayers' money (Medicaid and State funds) to CPSA's
2 members (except SEABHS), to hand-picked CPSA subcontractors (extra-contractual
3 compensation), to entities outside CPSA's service area and to entities for uses other than
4 CPSA's purpose to exist—managing behavioral health services in five (5) southern
5 Arizona counties. Over the past three fiscal years, CPSA (i) paid its Chief Executive
6 Officer \$1,332,372; (ii) paid its Chief Financial Officer and Chief Operating Officer the
7 sum of \$1,276,043; (iii) paid its lobbyists \$204,887; (iv) incurred \$792,273 in “travel”
8 expenses and \$614,310 in “convention” expenses; and (v) paid its lawyer \$408,263. At
9 the same time, CPSA cut services.

10 6. Operating its for-profit enterprise under the guise of a non-profit company
11 has been lucrative. CPSA has accumulated \$60 million of unrestricted net assets.
12 CPSA's Chief Executive Officer is presently restructuring CPSA to engage in business
13 ventures outside the scope of its stated purpose of managing the delivery of behavioral
14 health care services in five (5) southern Arizona counties. CPSA will spend as much of
15 the \$60 million as possible before CPSA's existing contract with ADHS expires on June
16 30, 2013. Judicial dissolution of CPSA and the appointment of a receiver to wind down
17 CPSA's affairs can be responsibly accomplished between now and June 30, 2013.
18 SEABHS has no intention of disrupting the delivery of services. There is no risk of such
19 disruption under a carefully crafted court order for appointment of a receiver.

20 JURISDICTION

21 7. SEABHS and CPSA are Arizona non-profit corporations, authorized to
22 conduct business in the State of Arizona, and carrying on regular, systematic and
23 continuous business in Pima County, Arizona.

24 8. Defendant Neal Cash is the Chief Executive Officer and a non-voting
25 member of the board of directors of CPSA.

26 9. Defendant Charles Andrade is the Chief Financial Officer of CPSA.

27 10. Defendants Jane Doe Cash and Jane Doe Andrade are the spouses of
28

1 Defendants Cash and Andrade and are joined as defendants pursuant to A.R.S. § 25-
2 215(D).

3 11. Defendants Jane Doe Cash and Jane Doe Andrade are fictitiously named.
4 At such time as their actual names become known to SEABHS, the true name(s) will be
5 substituted in subsequent pleadings.

6 12. All acts or omissions forming the basis for liability of Defendants Cash and
7 Andrade were done on behalf or for the benefit of their marital communities, if any.

8 13. Defendants Banner Health ("Banner"), TMC Healthcare ("TMC") and
9 Behavioral Health Coalition of Southern Arizona, Inc. ("BHC") are Arizona non-profit
10 corporations. Banner, TMC and BHC are joined to this action pursuant to the court's
11 minute entry dated August 22, 2011.

12 14. This court has personal jurisdiction over the parties.

13 15. This court has subject matter jurisdiction over the claims pled in this action
14 pursuant to A.R.S. §§ 12-123, 10-11430, and 10-11604.

15 16. Venue is proper in Pima County, Arizona, pursuant to A.R.S. §§ 12-401,
16 10-11431(A) and 10-11604(A).

17 **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

18 **A. Corporate Organization**

19 17. SEABHS was incorporated in 1976 as a non-profit corporation for the
20 purpose of providing community-based behavioral health services in the general vicinity
21 of Cochise, Graham, Greenlee, and Santa Cruz Counties ("Southeastern Counties").

22 18. In or about February 1995, SEABHS, along with Arizona Physicians IPA,
23 Inc. ("APIPA") and BHC created CPSA by filing the Articles of Incorporation
24 ("Articles") with the Arizona Corporation Commission.

25 19. Non-profit corporations in the State of Arizona may be formed for any
26 lawful purpose and non-profit corporations may elect to prepare articles of incorporation
27 for purposes of obtaining federal tax-exempt status with the Internal Revenue Service.
28

1 20. The Articles filed with the Arizona Corporation Commission, including the
2 purposes expressed therein, were specifically drafted and intended to comply with 26
3 U.S.C. § ("IRC") 501(c)(3).

4 21. As expressly set forth in the Articles, CPSA is organized to be operated
5 "exclusively for charitable purposes within the meaning of and it shall not carry on any
6 activity not permitted to be carried on (1) by an organization exempt from Federal
7 income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or
8 the corresponding provision of any future United States Internal Revenue law (the
9 'Code'), or (2) by a corporation contributions to which are deductible under Sections
10 170(c), 2055(a)(2) or 2522(a)(2) of the Code."

11 22. In accordance with the Articles, CPSA's corporate existence is restricted to
12 operating an organization exclusively for charitable purposes within the meaning of IRC
13 501(c)(3).

14 23. In its Application for Recognition of Exemption Under Section 501(c)(3) of
15 the Internal Revenue Code, Form 1023 ("Form 1023"), CPSA stated that CPSA was
16 formed to serve as the contracted regional behavioral health authority ("RBHA") for the
17 Southeastern Counties and Pima County. CPSA By-Laws state that CPSA was
18 incorporated for the purpose of contracting with the State of Arizona, Department of
19 Health Services, Division of Behavioral Health Services ("ADHS") as a RBHA for
20 ADHS's Geographic Service Area 3 (comprised of the four (4) Southeastern Counties)
21 ("GSA3") and Geographic Service Area 5 (comprised of Pima County) ("GSA5").

22 24. SEABHS, APIPA, and BHC ("Initial Members") each contributed funds to
23 capitalize CPSA and serve as its initial operating capital. SEABHS and APIPA
24 contributed \$507,500 each, while BHC contributed \$485,000.

25 25. SEABHS and BHC still remain one-third equity holders in CPSA. APIPA
26 sold its interest to Banner and TMC.

27 **B. CPSA's Federal Tax-Exempt Status**
28

1 26. In 1995, CPSA applied for status and treatment under IRC 501(c)(3) as a
2 tax-exempt entity.

3 27. CPSA's 1995 Form 1023 included a statement that "ADHS requires that all
4 RBHA's be non-profit organizations exempt from tax under Internal Revenue Code
5 Section 501(c)(3)."

6 28. CPSA received recognition as tax-exempt entity from the IRS pursuant to
7 IRC 501(c)(3).

8 29. The statutory scheme defining RBHAs, A.R.S. § 36-3401 et seq., does not
9 require RBHAs to qualify for tax-exempt status under IRC 501(c)(3).

10 30. Subsequent to 1995, CPSA has not supplemented or amended its Form
11 1023 to correct inaccuracies or amend its purpose.

12 31. Any material change in purpose must be reported to the IRS. Failure to
13 supplement or amend Form 1023 constitutes a violation of the IRC.

14 32. To qualify as a tax-exempt organization under IRC 501(c)(3), an
15 organization providing managed care services, like a private for-profit HMO, must meet
16 specific charitable standards.

17 33. The Initial Members forming CPSA were unrelated, non-profit, tax-exempt
18 behavioral health care providers. CPSA was formed to negotiate and acquire capitated
19 managed care contracts from ADHS.

20 34. CPSA, as a RBHA, does not provide a direct community health benefit
21 under IRC standards because it does not provide care to the eligible population. That
22 function is performed by providers – not CPSA.

23 35. The services CPSA provides to ADHS are not defined as charitable
24 activities. Rather, they are common commercial services, ordinarily carried on for profit.

25 36. CPSA's commercial activity is not supplied in a charitable manner because
26 its contract with ADHS provides for payment to cover CPSA's costs.

27 37. CPSA does not qualify as an IRC 501(c)(3) tax-exempt entity.
28

1 38. Since CPSA's activities do not qualify as tax-exempt and its organizational
2 purposes are restricted to operating exclusively for charitable purposes within the
3 meaning of IRC 501(c)(3), CPSA cannot continue to operate under its Articles.

4 **C. Contractual Relationships Between ADHS, CPSA and SEABHS**

5 39. Before CPSA was incorporated, SEABHS had prepared its own response to
6 the ADHS request for proposals to serve as the RBHA for GSA3.

7 40. SEABHS withdrew its bid after ADHS awarded the GSA3 contract to
8 SEABHS. The SEABHS bid withdrawal was part of an agreement with the Initial
9 Members of CPSA to make one bid for GSA3 and GSA5.

10 41. SEABHS contemplated that CPSA would perform the planning,
11 development, implementation, operation and improvement of a system of community-
12 based comprehensive behavioral health services as the RBHA for all five counties.

13 42. In or about February 1995, CPSA adopted its By-Laws, which provided,
14 consistent with the Articles, that CPSA would be governed by a board of directors
15 comprised of three to fifteen directors, one-third of which would be appointed by each of
16 the Initial Members.

17 43. In 1995, ADHS awarded CPSA the RBHA contracts for GSA3 and GSA5,
18 to serve all five counties.

19 44. After CPSA was awarded the RBHA contracts in 1995, SEABHS
20 reorganized its operations to sub-contract with CPSA and provide direct care services to
21 eligible patients in GSA3.

22 45. In 2004, ADHS issued a new request for proposals (no. HP532003) for the
23 RBHA contract(s) for GSA3 and GSA5 ("2005 RFP").

24 46. On October 14, 2004, CPSA responded to the 2005 RFP and submitted its
25 proposal to serve as RBHA for GSA3 and GSA5 under a new three-year contract with
26 ADHS, which could be extended twice for one-year intervals by contract amendment.

27 47. On February 10, 2005, CPSA submitted its Best and Final Offer for the
28

1 2005 RFP.

2 48. On March 1, 2005, ADHS awarded the contract ("2005 Contract") for
3 GSA3 and GSA5 to CPSA.

4 49. On June 30 and July 5, 2005, CPSA sub-contracted with SEABHS under
5 the terms of a Subcontract Agreement – Comprehensive Service Network (no. A0506) to
6 provide direct care behavioral health services to eligible patients in GSA3
7 ("Subcontract"). The Subcontract was for one year, coinciding with the fiscal year from
8 July 1, 2005 to June 30, 2006 ("FY2006").¹

9 50. On July 1, 2005, CPSA commenced performance of the 2005 Contract.

10 51. On July 1, 2005, SEABHS commenced performance of the Subcontract.

11 52. Under the Subcontract, SEABHS was required to provide a continuum of
12 care and services listed in paragraph 1, above, in at least eight locations (Benson, Bisbee,
13 Douglas, Morenci, Nogales, Safford, Sierra Vista, and Willcox) in the Southeastern
14 Counties.

15 53. Under the Subcontract, CPSA incorporated by reference the CPSA
16 Financial Reporting Guide. Subcontract, Standard Terms, section L(3)(a)(xiv).

17 54. On June 20 and 28, 2006, CPSA and SEABHS agreed to extend the
18 Subcontract by one year for FY2007.

19 55. On June 11, 2007, CPSA and SEABHS agreed to extend the Subcontract by
20 one year for FY2008.

21 56. On September 1, 2008, CPSA and SEABHS agreed to extend the
22 Subcontract by one year for FY2009.

23 57. On November 3 and 14, 2008, ADHS and CPSA agreed to an amendment
24 to the 2005 Contract that incorporated the ADHS Financial Reporting Guide by
25 reference.

26
27
28 ¹ ADHS, CPSA and SEABHS utilize the same fiscal year. Except where otherwise indicated, all fiscal years
referenced in this pleading refer to the time period running from July 1, 20xx to June 30, 20xx + 1, which are
referred to as "FY20xx + 1". Thus, "FY2008" refers to July 1, 2007 through June 30, 2008.

1 58. On June 8, 2009, CPSA and SEABHS agreed to extend the Subcontract by
2 one year for FY2010.

3 **D. The Loss of GSA3**

4 59. On October 6, 2009, ADHS issued a new request for proposals (no.
5 HP032097) for RBHA contracts for GSA3 and GSA5, among others.

6 60. By December 8, 2009, ADHS had received seven proposals from various
7 bidders including CPSA and CENPATICO of Arizona, Inc. ("Cenpatico"), a *for-profit*
8 corporation.

9 61. Of the seven bidders, five were *for-profit* entities.

10 62. On March 17, 2010, ADHS awarded the RBHA contract for GSA3 to
11 Cenpatico and the RBHA contract for GSA5 to CPSA.

12 63. CPSA lost GSA3 (Southeastern Counties), eighty percent (80%) of its
13 service area, but continued as the RBHA for GSA5 (Pima County).

14 64. On April 6, 2010, CPSA filed a bid protest with the chief procurement
15 officer of ADHS.

16 65. On April 21, 2010, ADHS denied CPSA relief.

17 66. On April 26, 2010, CPSA appealed ADHS' decision to the Office of
18 Administrative Hearings ("OAH").

19 67. An administrative law judge issued an order staying the GSA3 RBHA
20 contract award, forcing ADHS to continue with CPSA as the RBHA for GSA3, beyond
21 the June 30, 2010 expiration of the 2005 Contract, until the appeal was resolved.

22 68. While the bid protest was pending, in August 2010, CPSA reached an
23 agreement for transition of the GSA3 RBHA contract from CPSA to Cenpatico
24 ("Transition Agreement").

25 69. Under the Transition Agreement, on September 10, 2010, CPSA withdrew
26 its bid protest and caused its appeal to be dismissed.

27 70. Under the Transition Agreement, on November 30, 2010, the 2005 Contract
28

1 expired.

2 71. During the bid protest proceedings, CPSA extended the Subcontract until
3 November 30, 2010.

4 72. CPSA's operations as a RBHA have been scaled back exclusively to Pima
5 County for GSA5.

6 73. CPSA's existing RBHA contract for GSA5 expires on June 30, 2013.

7 **E. CPSA Wrongfully Kept \$3.1 Million of SEABHS Money**

8 74. From and after August 2010, through the expiration of the transitional
9 period on November 30, 2010, CPSA knew that its program service revenue would
10 substantially decrease, due to its loss of the SEABHS service area (GSA3).

11 75. Under the provisions of the 2005 Contract, CPSA was paid by ADHS using
12 a capitation methodology, meaning that it was paid on a per-enrolled-member basis, one-
13 twelfth of its annual contract amount, every month.

14 76. Under the Subcontract, CPSA paid SEABHS in the same fashion.

15 77. To ensure that ADHS received value and services to all enrollees, ADHS
16 required that CPSA compile evidence of providing services, known as "encounters."

17 78. After the end of each fiscal year, ADHS computed a deficit or surplus of
18 encounter value compared to program service revenue.

19 79. Pursuant to the ADHS Financial Reporting Guide, where ADHS computed
20 deficits in encounter value, ADHS subtracted and withheld from CPSA either two
21 percent (2%) of the budgeted program service revenue or the dollar value of the
22 deficiency in each funding corridor, whichever was less.

23 80. Under the Subcontract, CPSA withheld amounts from SEABHS in the
24 same fashion for encounter value deficits.

25 81. Under the CPSA Financial Reporting Guide, CPSA stated that it passes
26 through the withholding of ADHS to SEABHS and other sub-contractors.

27 82. For FY2010, ADHS withheld \$712,047 from CPSA for all of GSA3.

1 83. For FY2010, CPSA withheld \$3,052,972 from SEABHS.

2 84. In spite of a demand for payment and/or an explanation for keeping
3 SEABHS' money, CPSA refused to pay SEABHS.

4 85. Under the 2005 Contract, CPSA recovered rebate allocations from
5 pharmaceutical manufacturers based upon quantities of drugs purchased by enrolled
6 consumers, through the providers.

7 86. Under the Subcontract, CPSA was required to pass on pharmaceutical
8 rebates to SEABHS.

9 87. For FY2010, SEABHS was entitled to pharmaceutical rebates of not less
10 than \$90,562.34.

11 88. For FY2011, SEABHS was entitled to pharmaceutical rebates of not less
12 than \$121,661.16.

13 89. On May 2, 2011, through its counsel, SEABHS made demand for its
14 pharmacy rebates.

15 90. On June 2 and 6, 2011, nearly a year after the end of FY2010, CPSA paid
16 SEABHS pharmacy rebates, aggregating over \$200,000, without verification as to how
17 the amounts were computed.

18 91. CPSA intentionally delayed payment until CPSA was threatened with a
19 lawsuit to pay SEABHS its pharmacy rebate monies.

20 **F. CPSA's Unauthorized Non-RBHA Activities**

21 92. On July 2, 2002, CPSA organized Community Behavioral Health
22 Properties of Southern Arizona, LLC ("CBH Properties").

23 93. CBH Properties was organized as a holding company to acquire and own
24 real estate.

25 94. CBH Properties is a wholly-owned *for-profit* subsidiary of CPSA..

26 95. On February 28, 2008, CPSA organized Community Partnership Housing,
27 LLC ("CPH").

1 96. CPH was organized as a holding company to acquire and own real estate.

2 97. CPH is a wholly-owned *for-profit* subsidiary of CPSA.

3 98. Presently, CPH owns three real estate investments in Tucson, Arizona:
4 Grantland Apartments, a twelve-unit apartment building; Alvernon Apartments, a ten-
5 unit apartment building; and Casita Mia Apartments, an eighty-eight unit apartment
6 complex.

7 99. CPH acquired these three properties, worth over \$2.2 million, from CBH
8 Properties.

9 100. On February 28, 2008, CPSA organized Community Partnership Housing –
10 Elvira, LLC (“CPH Elvira”).

11 101. CPH Elvira was organized as a holding company to acquire and own real
12 estate.

13 102. CPH Elvira is a wholly-owned *for-profit* subsidiary of CPSA.

14 103. On March 16, 2009, CPSA incorporated Sonrisa Apartments, Inc.
15 (“Sonrisa”).

16 104. Sonrisa was incorporated to acquire and operate an apartment building
17 known as the Sonrisa Apartments.

18 105. Sonrisa’s capital and financing come from a U.S. Department of Housing
19 and Urban Development (“HUD”) grant.

20 106. Sonrisa is stated to be a non-profit corporation with no members, but is
21 controlled by management of CPSA.

22 107. Sonrisa’s financial condition and financial statements are consolidated with
23 those of CPSA, as if Sonrisa was a wholly-owned subsidiary of CPSA.

24 108. In May 2010, CPSA organized Community Partnership Properties on
25 Wilmot, LLC (“CPP Wilmot”).

26 109. CPP Wilmot was organized as a holding company to acquire and own real
27 estate.

1 110. CPP Wilmot is a wholly-owned *for-profit* subsidiary of CPSA.

2 111. CPP Wilmot is disclosed in a CPSA financial statement as the owner of the
3 real property located at 535 N. Wilmot, Tucson, Arizona (“Wilmot Property”).

4 112. Upon information and belief, the actual owner of the Wilmot Property is
5 535 Wilmot Investors LP and/or 5th & Wilmot Investors LP.

6 113. CPSA’s financial statements do not disclose the precise date of
7 organization of CPP Wilmot or the state in which it was organized.

8 114. Pursuant to A.R.S. § 36-503.02, the State established the Mental Illness
9 Services Fund (“MISF”), which was contemplated to be used, in part, for housing
10 services for the seriously mentally ill.

11 115. ADHS’s administration of the MISF contemplated that RBHAs would
12 contract with or refer eligible patients to unaffiliated non-profit organizations that had
13 drawn upon MISF funding to provide housing services to eligible patients.

14 116. ADHS has specifically declared that MISF-funded housing projects are
15 ineligible if conducted for profit.

16 117. CPSA’s ownership of housing projects by for-profit subsidiaries violates
17 ADHS’s housing program policy.

18 118. As alleged in paragraph 4, over the course of its existence, CPSA has given
19 away millions of dollars to various interests which are unrelated to behavioral health and
20 not in exchange for consideration or value.

21 119. As alleged in paragraph 4, CPSA has expended millions of dollars to
22 sponsor various social events, conducted by organizations with purposes unrelated to
23 CPSA’s line of authorized business as RBHA for GSA3 and GSA5.

24 120. In April and May 2011, Defendant Cash submitted to CPSA’s board a
25 proposed organizational chart whereby CPSA would become a part of a web of new
26 business entities providing services in non-RBHA business including TRICARE and
27 Arizona Long Term Care System.

1 121. The organizational chart also provides for the formation of a for-profit
2 administrative services organization ("ASO").

3 122. The ASO would be formed to contract with CPSA and its web of entities to
4 provide them with administrative and management services for fees.

5 123. In this fashion, the ASO is used as a mechanism to strip non-profit entities
6 of apparent profits to the detriment of the non-profit entities' charitable purpose and
7 members.

8 124. Upon information and belief, the formation of a web of CPSA related
9 entities, including the ASO, is contrived and designed to dissipate CPSA's \$60 million in
10 unencumbered net assets.

11 125. On August 16, 2011, CPSA submitted a joint response to an ADHS
12 Request for Information (No. HF232008) regarding a possible contract to serve as RBHA
13 and managed care organization ("MCO") for physical health for GSA6, which is
14 comprised of Maricopa County.

15 126. Upon information and belief, CPSA intends to jointly bid upon, or joint
16 venture with, a physical health MCO to be awarded a RBHA/physical health managed
17 care contract for Maricopa County.

18 127. The ownership of real estate for profit, the corporate gifts, the extravagant
19 travel and conference expenditures, the expansion into non-RBHA business lines, the
20 organization of a web of business entities to strip CPSA of its liquidity, and the possible
21 geographic expansion of business into Maricopa County fall outside the scope of CPSA's
22 authorized Form 1023 charitable purpose and mission and violate the Articles and By-
23 Laws.

24 **G. CPSA Profits of Over \$60 Million**

25 128. In FY1996 through FY2000, CPSA booked excess revenue, which would
26 otherwise be profit, of \$16.5 million.

27 129. In FY2001 through FY2005, CPSA booked excess revenue, which would
28

1 otherwise be profit, of \$14.7 million.

2 130. In FY2006 through FY2010, CPSA booked excess revenue, which would
3 otherwise be profit, of \$24.1 million.

4 131. CPSA has current net assets worth approximately \$60 million.

5 132. In addition to its real estate assets, CPSA has millions of dollars of
6 investments it holds and from which it earns substantial additional revenue.

7 133. CPSA has developed business plans to expand its commercial activity,
8 enter into new lines of business and fund the expansion with retained earnings.

9 134. In October 2010, CPSA exerted pressure on a SEABHS-appointed CPSA
10 board member representative to execute a form of Consent to Action in Lieu of Special
11 Meeting of Members together with a set of Restated Articles of Incorporation which
12 would have eliminated SEABHS as a member of CPSA, without any compensation for its
13 one-third membership interest as an owner of CPSA.

14 135. SEABHS was given no prior warning or notice that CPSA would ask
15 SEABHS to execute a consent in lieu of a member meeting and to sign the Amendment
16 removing SEABHS as a member.

17 136. CPSA refuses to offer reasonable consideration or to arrange a buy-out of
18 SEABHS's valuable one-third membership interest in CPSA.

19 137. Presently, the value of SEABHS's one-third membership interest exceeds
20 \$20 million, after payment of CPSA debts and compliance with the corporate dissolution
21 provisions of A.R.S. §§ 10-11430 through 10-11432.

22 **FIRST CLAIM FOR RELIEF: COURT-ORDERED INSPECTION**

23 138. SEABHS incorporates by reference all prior allegations as though fully set
24 forth in this claim for relief.

25 139. In early 2011, SEABHS representatives made informal requests for
26 documents and records of CPSA.

27 140. On April 15, 2011, SEABHS forwarded communication to CPSA
28

1 requesting, pursuant to A.R.S. § 10-11602, that SEABHS, as a member of CPSA, obtain
2 access to CPSA's corporate offices and inspect and/or copy the following documents:

3 a. The Minutes of all CPSA Member Meetings and CPSA Director
4 Meetings and records and of all actions taken by Members without a meeting for the past
5 three (3) fiscal years.

6 b. All written communications to Members generally within the past
7 three (3) fiscal years, and all communications to, from, and by the CEO Neal Cash from
8 January 1, 2010 through March 31, 2011.

9 c. All documents and records supporting the determination and
10 payment of the salary and benefits CPSA paid to or on behalf of its CEO Neal Cash and
11 its CFO Charlie Andrade for the past three (3) fiscal years.

12 d. IRS Form 990 and Form 990-T (if applicable) for the last three (3)
13 years including any amended informational filings.

14 e. A complete copy of IRS Form 1023 (this Form is filed with the IRS
15 to establish CPSA as a 501(c)(3) entity).

16 f. All documents pertaining to the terms, conditions, and sale price of
17 the membership interest transfer to Samaritan Health System, TMC dated April 7, 1999,
18 and to Banner dated November 3, 1999.

19 g. The CPSA file regarding non-RBHA administrative functions and
20 expanded corporate structure "to meet new business ventures Neal has been working on
21 the past six months" referenced in the March 31, 2011 packet supplied to the CPSA
22 Board of Directors.

23 141. On April 22, 2011, the day of the inspection, a SEABHS representative
24 appeared at the CPSA office to inspect the documents. CPSA later responded in writing
25 objecting to the inspection, stating that it was overbroad, inconvenient, and expensive.

26 142. On April 24, 2011, SEABHS, through its counsel, responded to CPSA's
27 correspondence proposing to alleviate the inconvenience and expense, and identifying the
28

1 applicable provision of CPSA's By-laws stating that a director could inspect any records
2 for any proper purpose at any reasonable time.

3 143. SEABHS, through its counsel, requested the inspection be rescheduled for
4 April 28, 2011.

5 144. On April 27, 2011, CPSA's counsel responded to this proposal stating,
6 again, that CPSA could not afford the staff or resources to compile documents requested.

7 145. On April 27, 2011, CPSA's counsel agreed to provide Form 990 and Form
8 1023.

9 146. On April 29, 2011, counsel for SEABHS again requested access to the
10 documents.

11 147. On May 2, 2011, CPSA's counsel advised that access would be permitted
12 to corporate meeting minutes and that financial statements had been provided.

13 148. On June 22, 2011, CPSA's counsel provided a compact disc purporting to
14 contain all documents responsive to the categories set forth in ¶ 139 above.

15 149. The compact disc includes 805 pages of documents, which were printed
16 emails between Patsy Spillman and board members and Neal Cash and board members;
17 and meeting notices, meeting agendas, and meeting minutes for the board of directors, its
18 governance committee and separately held executive sessions of the board of directors.

19 150. The compact disc documents were redacted at various places to prevent
20 review of attorney communication to CPSA management and its directors (a third of
21 whom are appointed by SEABHS), which advice was intended to benefit CPSA and its
22 members (one of which is SEABHS).

23 151. SEABHS has no way of verifying that the documents produced are a
24 complete production of all relevant documents it sought under ¶ 139 above.

25 152. SEABHS has not been furnished access to inspect the documents as they
26 are maintained and filed by CPSA.

27 153. SEABHS has not been furnished a complete production of items (b), (c), (f)
28

1 and (g) in ¶ 139.

2 154. CPSA has blocked access.

3 155. CPSA has insisted on unnecessary protective orders.

4 156. CPSA has imposed unsupported stipulations for access because CPSA
5 claims information is "proprietary" ignoring that SEABHS is one of four "proprietors" of
6 CPSA.

7 157. CPSA has accused SEABHS-appointee Vicki Barden of a conflict of
8 interest because she sought access to documents at CPSA's offices.

9 158. CPSA's dilatory tactics are calculated to avoid disclosure of CPSA
10 corporate information to a one-third owner of CPSA. CPSA intends to conceal its
11 records in violation of A.R.S. § 10-11602.

12 159. It is expected such records and documents will reveal in detail how
13 Defendant Cash's FY2010 compensation reached nearly \$500,000.

14 160. Corporate records and documents will also reveal in detail how, during the
15 same fiscal year, the value of Defendant Andrade's compensation was in excess of
16 \$220,000.

17 161. These are not typical compensation levels earned by executives in similar
18 non-profit corporations. For example, the CEO salary for Northern Arizona Regional
19 Behavioral Health Authority, a non-profit RBHA serving five (5) northern Arizona
20 counties, was \$215,537 for FY2009.

21 162. The CPSA records and documents are expected to demonstrate that CPSA's
22 expenses for "travel" and "conferences" were actually forms of compensation to officers,
23 their families and friends.

24 163. In FY2009, CPSA spent over \$200,000 in legal fees, with only \$1,290 of
25 those dollars related to "program service expenses."

26 164. CPSA's expenses are the subject of legitimate inquiry by its one-third
27 owner, SEABHS.

1 165. In all respects, SEABHS' written request for access to CPSA's records and
2 documents was warranted as an owner of CPSA to investigate CPSA's tax exempt status.

3 166. Pursuant to A.R.S. § 10-11604, a member of an Arizona non-profit
4 corporation may apply to the Superior Court for a summary order permitting inspection at
5 the corporation's expense.

6 167. CPSA failed and refused to provide the level of access contemplated by the
7 statutes and as requested by SEABHS.

8 168. Pursuant to A.R.S. § 10-11604, SEABHS is entitled to its attorneys' fees
9 and costs to secure an order for inspection and access to the corporate records.

10 **SECOND CLAIM FOR RELIEF: DISSOLUTION**

11 169. SEABHS incorporates by reference all prior allegations as though fully set
12 forth in this claim for relief.

13 170. Pursuant to A.R.S. § 10-11430, the Superior Court may dissolve a
14 corporation on application of a member holding twenty-five percent or more of the
15 member interest, if the member establishes that: a) the directors are deadlocked in the
16 management of corporate affairs and that such deadlock could cause irreparable harm or
17 the affairs cannot be conducted without resolution of the deadlock; or b) those in control
18 of the corporation are acting illegally, oppressively, or fraudulently; or c) the corporate
19 assets are being wasted, misapplied, diverted, or appropriated for non-corporate purposes.

20 171. CPSA attempted to oust SEABHS without compensation. CPSA's assets
21 are being misapplied, diverted to for-profit use and appropriated for purposes other than
22 managing delivery of behavioral health care services in five (5) southern Arizona
23 counties.

24 172. CPSA does not qualify for a non-profit tax-exempt status.

25 173. One of the fundamental purposes for which CPSA was incorporated is
26 gone. CPSA lost eighty percent (80%) of its service area (GSA3) to its *for-profit*
27 competitor, Cenpatico.
28

1 174. CPSA failed to amend or supplement its Form 1023 to establish a
2 continuing right for its tax-exempt certification.

3 175. CPSA's tax filings state its revenue as originating from "grants and
4 charitable contributions." In truth and in fact, CPSA's revenue comes from its activities
5 as a RBHA in the form of "program service revenue." CPSA's mis-statement of revenue
6 as "grants and contributions" is more than an accounting fiction, because the
7 classification of income from various sources is a critical component for CPSA to
8 maintain its tax-exempt certification.

9 176. CPSA makes cash gifts to businesses and organizations which may or may
10 not be related to CPSA's RBHA business. As alleged in paragraph 4, hundreds of
11 thousands of dollars of taxpayers' money was given away by CPSA in FY2009 and
12 FY2010 for sponsorships and gifts to other organizations to spend on promotional events,
13 celebratory events, and capital investment in businesses, all utilizing CPSA corporate
14 assets (funded by taxpayers).

15 177. CPSA's financial accumulation of over \$60 million in net assets
16 conclusively establishes that it is not and has not operated as a non-profit tax-exempt
17 charitable organization for at least the past decade.

18 178. CPSA has developed business plans, without the input and to the exclusion
19 of SEABHS, to enter into new lines of business including direct clinical services in
20 behavioral health, services under contract with the Arizona Long Term Care System,
21 services under contract with TRICARE (the United States military health insurance
22 program), the continued growth of its real estate investments, and a Maricopa County
23 RBHA/physical health managed care contract.

24 179. Among its proposed affiliate entities that CPSA has proposed to incorporate
25 is the ASO, which would provide management and administrative services to CPSA, its
26 parent corporation, and all sibling corporations and entities.

27 180. CPSA management, through Defendant Cash, has proposed that the ASO
28

1 would be incorporated as a for-profit entity.

2 181. The use of an ASO in the corporate reorganization is a means by which
3 non-profit corporations can conceal and transfer actual profit by entering into
4 management agreements. Under the management agreements, the non-profit pays
5 exorbitant management fees to the ASO, thereby stripping itself of apparent profit that it
6 cannot legally retain.

7 182. Upon information and belief, Defendant Cash's proposed corporate
8 reorganization is intended to strip CPSA of profits and, more importantly, its net assets in
9 excess of \$60 million dollars.

10 183. Upon further information and belief, Defendants Cash and Andrade would
11 be able to continue overpaying themselves or increasing such overpayment by channeling
12 profits and net assets of CPSA, through the management agreement with the ASO, which
13 would employ them to do the same tasks they are already doing for CPSA.

14 184. SEABHS objects and has communicated its objection to the expansion of
15 CPSA into non-RBHA business activities.

16 185. SEABHS objects and has communicated its objection to reorganization of
17 CPSA into a web of corporations that is designed to rob CPSA and its members,
18 including SEABHS, of \$20 million in equity.

19 186. CPSA's certification to operate as a non-profit, tax-exempt, charitable
20 corporation under IRC 501(c)(3) was premised upon operating a behavioral health
21 service delivery network in five Arizona counties. The premise for CPSA's existence no
22 longer exists.

23 187. Though a majority of CPSA's membership may wish to proceed with non-
24 RBHA business, SEABHS will vote against such measures.

25 188. CPSA's initiation of the bid protest against Cenpatico for the GSA3 RBHA
26 contract placed SEABHS in a difficult position. The prevailing bidder, Cenpatico, could
27 have viewed SEABHS as a corporate affiliate of Cenpatico's disgruntled competitor,
28

1 CPSA, rather than as a hallmark provider with a successful track record spanning thirty-
2 five years, in the newly acquired GSA3.

3 189. CPSA wrongfully kept over \$3 million of SEABHS money held by CPSA.
4 CPSA's conversion of SEABHS money was motivated by bad faith and calculated by
5 CPSA to cause financially devastating consequences to SEABHS. As a direct
6 consequence of CPSA's wrongfully converting over \$3 million, SEABHS had to lay off
7 forty-five (45) employees. Moreover, SEABHS has eliminated critical service programs
8 for the seriously mentally ill.

9 190. CPSA knowingly and intentionally kept over \$200,000 of pharmacy rebates
10 owed to SEABHS, for nearly a year after the end of FY2010. CPSA gave SEABHS its
11 pharmacy rebate money only after being threatened with litigation.

12 191. The financial choke-hold CPSA has imposed on SEABHS is a tactic
13 intended by CPSA to oppress and squeeze SEABHS out of its membership interest in
14 CPSA.

15 192. Defendant Cash has made statements to the effect that he "should have
16 carved you [SEABHS] up a long time ago."

17 193. CPSA's attempt to oust SEABHS without a properly noticed meeting was
18 oppressive conduct further justifying judicial dissolution of CPSA.

19 194. The failure and refusal to permit SEABHS access to CPSA corporate
20 records is intended by CPSA to conceal documents which may be helpful to SEABHS to
21 assess CPSA's net value; to aid in a negotiated and responsible buy-out of the SEABHS
22 membership interest; or for pro-rata distribution to members.

23 195. Pursuant to A.R.S. § 10-11431, the Superior Court has authority to issue
24 injunctions, appoint a receiver, issue a decree of dissolution, terminate the existence of a
25 corporation and impose other equitable relief.

26 196. SEABHS is being irreparably harmed by the conduct of CPSA.

27 197. SEABHS will continue to be irreparably harmed and potentially rendered
28

1 insolvent because CPSA will continue to deny SEABHS its right to payment of over \$3
2 million and will not make pro-rata distribution to SEABHS for its one-third ownership of
3 CPSA.

4 198. The management of CPSA has exclusive control over tens of millions of
5 dollars that are available to purchase SEABHS's one-third ownership interest of CPSA.

6 199. Without court control, through appointment of a receiver, CPSA will
7 continue to waste, misapply, and divert CPSA assets for non-corporate purposes. CPSA
8 is in possession of substantial funds and assets that it intends to use to support non-
9 RBHA entities.

10 200. CPSA's refusal to permit legal access to its documents strongly suggests it
11 is concealing and hiding its business, financial, and management activities.

12 201. Upon information and belief, CPSA will not preserve and protect
13 unencumbered assets of CPSA and will not minimize future liabilities.

14 202. A receiver should be appointed under A.R.S. § 10-11432 to ensure that
15 CPSA does not dispose of money and property and not transfer assets not authorized by
16 CPSA's Articles. The appointment of a receiver will ensure that CPSA does everything
17 necessary to wind up and liquidate assets and its affairs.

18 203. SEABHS is a member and owner of more than twenty-five percent (25%)
19 of CPSA. Accordingly, SEABHS is entitled to maintain this action for dissolution of the
20 corporation and receive a decree of dissolution of CPSA pursuant to A.R.S. § 10-
21 11433(B).

22 204. SEABHS is entitled to judicial dissolution of CPSA under A.R.S. § 10-
23 11430(B)(1), (2) and (4). The existing directors and management in control of CPSA are
24 acting in a manner that is illegal, oppressive or fraudulent as those terms are used in
25 A.R.S. § 10-11430(B)(2). Without court intervention, CPSA will continue to waste,
26 misapply and divert CPSA assets for purposes outside the scope of its Articles of
27 Incorporation.

1 205. Dissolving CPSA by the end of its current RBHA contract term for GSA5,
2 which expires on June 30, 2013, is in the best interest of CPSA, SEABHS, ADHS and the
3 clients who receive behavioral health care services.

4 **WHEREFORE**, SEABHS prays for entry of judgment in its favor and against
5 CPSA, as follows:

6 A. On SEABHS's first claim for relief:

7 1) An order directing CPSA to provide immediate access for inspection
8 and copying of all corporate records requested in SEABHS's written request referenced
9 in ¶ 139 of this Complaint;

10 2) An award of judgment in favor of SEABHS and against CPSA for
11 all clerical, administrative, incidental and other costs of inspecting, compiling, and
12 copying documents described above; and

13 3) An award of judgment in favor of SEABHS and against CPSA for
14 reasonable attorneys' fees and costs, and post-judgment attorneys' fees and costs incurred
15 in maintaining and enforcing of the foregoing orders.

16 B. On SEABHS's second claim for relief enter judgment in favor of SEABHS
17 and against CPSA for:

18 1) Findings of fact that CPSA has acted illegally, fraudulently, and
19 oppressively against SEABHS;

20 2) An order declaring CPSA to be dissolved and directing CPSA to
21 wind up its affairs, liquidate its assets, terminate its existing contracts, satisfy its
22 obligations, and provide notice to creditors for that purpose;

23 3) An injunction precluding CPSA, its officers, directors, agents,
24 contractors, employees, subsidiaries, and all others in active concert and participation
25 with CPSA from: a) making further misrepresentations of fact to the IRS and any other
26 taxing authority; b) exploring, researching, investigating, evaluating, or planning the
27 entry of CPSA into further business activities outside the scope of its necessary functions
28

1 as RBHA; c) disposition of any corporate assets, payment of any corporate funds, grants
2 of any corporate funds or property; or expenditure of corporate funds on any other
3 business activity or payment of any expense outside the scope of its necessary functions
4 as RBHA; d) conduct or activity oppressive, retaliatory, or in bad faith to members,
5 including SEABHS; and e) any other conduct resistant to an orderly dissolution and
6 winding up of corporate affairs;

7 4) An order appointing a receiver and removing the present
8 management of CPSA and for such order to provide the receiver with authority to
9 transact such business as is necessary to wind up and conclude corporate business, to hire
10 and terminate employees, to perform or assign/delegate contractual obligations, to retain
11 the services of licensed persons required to staff and manage the corporation, to retain the
12 services of other professionals whose qualifications are established to the satisfaction of
13 the court, to pay the wages and salaries of necessary employees, to furnish such
14 employees with a continuation of employee benefits, to collect all debts and pay regular
15 obligations incurred in the ordinary course of business of the corporation, to file all
16 required tax returns, to file such reports as are required by the court on a periodic basis to
17 assess the progress of administration of the corporate affairs towards concluding all
18 business;

19 5) An order accepting all reports of the receiver and/or permitting
20 objections to such reports;

21 6) An order requiring the receiver to pay out any surplus assets pro-rata
22 to the members of the corporation as their interests appear in the corporate records and as
23 authorized by the Articles of Incorporation;

24 7) An order decreeing that CPSA is dissolved, defunct, and that its
25 corporate existence is terminated at the conclusion of the receivership and a
26 corresponding order discharging the receiver, with instructions that the receiver file the
27 final decree with the Arizona Corporation Commission;

8) In the alternative to the foregoing relief, an order directing CPSA to purchase the member interest of SEABHS or offer SEABHS's member interest for sale to CPSA's existing members, in an amount to be established at trial;


9) In the alternative to the foregoing relief, an order appointing a special master to evaluate and appraise the member interest of SEABHS and facilitate a purchase by CPSA or its existing members on such terms and conditions as are commercially reasonable under all circumstances; and

10). An award of judgment in favor of SEABHS and against CPSA for SEABHS's attorneys' fees and costs expended in preparing and maintaining this action.

C. Such other and further relief as the court deems just and equitable in the circumstances.

DATED this 1 day of September 2011.

CLARK HILL PLC

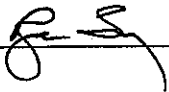
By: 
Russell Kolsrud
Ryan Lorenz
Josh McClatchey
Attorneys for Plaintiff Southeastern
Behavioral Health Services, Inc.

COPY of the foregoing hand-delivered
this 1 day of September, 2011 to:

John N. Iurino, Esq.
Sivan R. Korn, Esq.
Lewis and Roca LLP
One South Church, Suite 700
Tucson, AZ 85701-1611
*Attorneys for Defendant Community
Partnership of Southern Arizona (CPSA), Inc.*

COPY of the foregoing mailed
this 1 day of September 2011, to:

1 Shawn Aiken
2 AIKEN SCHENK HAWKINS & RICCIARDI PC
3 4742 N. 24th St., Ste 100
4 Phoenix, AZ 85016-4859
5 *Attorney for Defendants Cash and Andrade*

6 
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28