STATE OF NORTH CAROLINA

FILED
2015 JAN -5 P 12: 10
WAKE COUNTY, C.S.C.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13 CVS 14008

M. P. SOUTHERN,
On behalf of himself and all others similarly situated,
Plaintiff,

vs.

WAKEMED,
Defendant.

PLAINTIFF'S SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiff, by and through counsel, and on behalf of himself and all others similarly situated, alleges as follows against Defendant:

NATURE OF THE ACTION

1. This is a class action seeking compensatory damages and injunctive relief for Plaintiff individually, and as a representative of the class described herein.

2. Plaintiff, and members of the Class Plaintiff represents, are individuals who received medical treatment at hospital facilities owned and/or operated by Defendant. Plaintiff brings this case against Defendant because:

   a. Defendant wrongfully sent improper collection notices and collected payments for medical services in amounts that violate:

      i. the terms of the Consent Agreement for treatment executed by Plaintiff,

      ii. the terms of Defendant's offer (the "Offer") to Plaintiff and Class Members to treat them as an in-network provider of health care services pursuant to the terms of applicable Health Benefit Plans

and applicable Health Care Provider Contracts (also known as "Preferred Provider Contracts") and/or

iii. the terms of the applicable Health Care Provider Contracts entered into by Defendant with insurers and medical service corporations providing Health Benefit Plans to Plaintiff and the Class Members; and

b. Defendant breached its duty as attorney-in-fact for Plaintiff and Class Members by failing to collect, for services rendered, from health insurers and Health Benefit Plans who agreed or were obligated to pay for or provide medical services for Plaintiff and Class Members and/or by seeking reimbursement from Plaintiff and Class Members beyond the contractually specified amount due for the medical services provided.

c. Plaintiff also seeks injunctive relief against Defendant to prevent Defendant from continuing to undertake efforts to collect payments for medical services in amounts that violate the terms of its agreements with Class Members and their Health Benefit Plans and further in breach of Defendant's fiduciary duties as an attorney-in-fact for Plaintiff and Class Members.

Plaintiff, and members of the Class, have suffered damages and are entitled to injunctive relief as more fully described herein. The Health Benefit Plan(s) at issue are limited to those issued, sold, maintained, administered, serviced, provided, in whole or in part, by Blue Cross and Blue Shield of North Carolina ("BCBSNC")(one or more of said plans are collectively referred to herein as "Health Benefit Plans").

## PARTIES

3. Plaintiff M. P. Southern (hereinafter "Southern") is a citizen and resident of Wake County, North Carolina and he appears herein in his individual capacity and as a representative of the Class more fully set forth herein.

4. Upon information and belief, Defendant WakeMed ("WakeMed") is a North Carolina corporation headquartered and with its principal place of business in Wake County, North Carolina. Defendant WakeMed is a hospital as defined in N.C. Gen. Stat. §131E-6 and §131E-176.

## JURISDICTION AND VENUE

5. One or more of the parties, at all times pertinent hereto, reside in Wake County, and this cause of action arose in Wake County.

6. Wake County Superior Court is the proper trial division for this case as the total amount in controversy exceeds Twenty-Five Thousand Dollars ($25,000) pursuant to N.C.G.S. § 7A-243.

7. Jurisdiction and venue are otherwise properly held with this Honorable Court.

## FACTUAL ALLEGATIONS

8. On October 6, 2012, Plaintiff was injured in an accident with a motor vehicle while riding a bicycle near Creedmoor, North Carolina.

9. Following the accident, Plaintiff was transported by emergency medical services to Defendant's hospital facility commonly known as WakeMed North Healthplex located at or near 10000 Falls of Neuse Road, Raleigh, North Carolina (hereinafter "WakeMed North").

10. Plaintiff received treatment at WakeMed North on October 6, 2012 for his injuries sustained in the above referenced accident. Plaintiff incurred medical costs and expenses with various health care providers including, but not limited to, Defendant.

11. In conjunction with the medical care provided to Plaintiff at WakeMed North, Defendant accepted Plaintiff's co-pay under his Health Benefit Plan. Subsequently, Defendant generated a bill indicating standard charges for the medical care totaling $8,234.73.

12. At or around the time of treatment at WakeMed North, Defendant presented Plaintiff with a form titled "General Consent" which Plaintiff signed as requested by Defendant.

13. The General Consent form signed by Plaintiff made Defendant an attorney-in-fact for Plaintiff regarding the collection of benefits from third parties for Plaintiff's medical expenses.

14. Upon information and belief, the General Consent form signed by Plaintiff is commonly signed by patients seeking and receiving treatment at Defendant's medical facilities including members of the Class.

15. At all relevant times and pursuant to the Offer, Defendant has represented itself as an in-network provider for managed care Health Benefit Plans and has offered treatment to patients and agreed to accept in-network reimbursement as a Preferred Provider under the Health Benefit Plans for covered treatment of insureds such as Plaintiff and Class Members. At all times relevant, Plaintiff was a member of a Health Benefit Plan.

16. At all times relevant and pursuant to the Offer, Defendant represented that Defendant maintained Preferred Provider Contracts with Health Benefit Plans including the plan in which Plaintiff was a member.

17. At all times relevant and pursuant to the Offer, Defendant represented that members of Health Benefit Plans, including the plan in which Plaintiff was a member, would have access to Wakemed's Health Care System on the terms of Wakemed's Preferred Provider Contracts with those plans.

18. At the time of Plaintiff's admission to WakeMed North, Plaintiff presented to Defendant documentation indicating that Plaintiff was a member of a Health Benefit Plan and by this conduct and Plaintiff's acceptance of services, Plaintiff accepted the Offer.

19. Pursuant to the terms contained in the General Consent form, Defendant agreed to collect any benefits from BCBSNC for Plaintiff's medical care provided at WakeMed North and Defendant further agreed to refund to Plaintiff any overpayments received by Defendant from any payment source.

20. Upon information and belief, at all times relevant, Defendant and Health Benefit Plans had entered into Preferred Provider Contracts for the purpose of providing, *inter alia*, medical care to members of those Health Benefit Plans including Plaintiff and members of the Class. At all relevant times and pursuant to the Offer, Defendant offered to treat and furnish medical services to members of such Health Benefit Plans in exchange for payments by Plan members, including Plaintiff and members of the Class, as specified in the applicable Health Benefit Plans.

21. Upon information and belief, the Preferred Provider Contracts establish the terms for payment, including the payment rates, for medical care and services provided by Defendant to members of the Health Benefit Plans, including Plaintiff and members of the Class, and that such terms, including the payments to be made by members of the Plans set forth in the Health Benefit Plans were agreed to by Defendant as part of the

Preferred Provider Contracts and as part of the published Offer to treat patients as a Preferred Provider for these Health Benefit Plans.

22. Plaintiff and members of the Class are intended third-party beneficiaries of the applicable Preferred Provider Contracts and are the intended and protected beneficiaries of the regulatory scheme authorizing these contracts and allowing providers to furnish medical services directly to Health Benefit Plans.

23. Plaintiff and members of the Class, pursuant to the Offer and otherwise, are entitled to the terms and protections, including the rates, fees and prohibitions on balance billing and additional charges to Plan members for covered services, offered by and agreed to by Defendant as part of the Preferred Provider Contracts.

24. The terms of the Preferred Provider Contracts are incorporated, by reference, implication and/or reliance upon Defendant's representations regarding its status as a BCBSNC provider, into the General Consent executed by Plaintiff and members of the class and into the Offer.

25. Plaintiff and certain members of the Class are entitled to the terms, including the rates and fees, agreed to by Defendant as part of the Preferred Provider Contracts regardless of the source of payment for the incurred medical expenses.

26. The General Consent form and the Offer created an obligation for Defendant to provide medical care to Plaintiff in exchange for payment in the following two ways: (1) by Plaintiff for co-payments, coinsurance and/or deductibles and (2) payment by Plaintiff's health insurer BCBSNC pursuant to the terms as set forth in the Preferred Provider Contracts.

27. On October 6, 2012, as requested by Defendant, Plaintiff paid Defendant a $150.00 co-payment as required under the terms of his Health Benefit Plan and as requested by Defendant pursuant to, in accordance with, and in full compliance with and satisfaction of those terms, the terms of the applicable Preferred Provider Contract, the terms of the General Consent and the terms of the Offer. Under the terms of Plaintiff's Health Benefit Plan and the Offer, Plaintiff did not owe any further amounts for deductibles or coinsurance related to the treatment by Defendant.

28. Upon information and belief, pursuant to the terms of the Preferred Provider Contracts, Defendant's unilateral Offer to treat Plaintiff as a Preferred Provider which was accepted by Plaintiff, and/or the General Consent, Defendant filed its claim with BCBSNC and accepted payment from BCBSNC for the above described medical care and services provided to Plaintiff pursuant to his Health Benefit Plan and in compliance with the applicable Preferred Provider Contract, the General Consent and/or the Offer.

29. Upon information and belief, on or about October 19, 2012, Defendant received and accepted payment in full in the amount of $3,761.48 from BCBSNC for the above described medical care and services provided to Plaintiff.

30. Upon information and belief, the payment made by BCBSNC on or about October 19, 2012 in the amount of $3,761.48 represented payment pursuant to the terms and rates as set forth in the Preferred Provider Contracts.

31. Upon information and belief, pursuant to the Preferred Provider Contracts and Defendant's unilateral Offer to treat Plaintiff as a Preferred Provider which was accepted by Plaintiff, the payment to Defendant by BCBSNC on or about October 19, 2012

constituted payment in full on the account of Plaintiff for the above described medical care and services.

32. Upon information and belief, pursuant to the terms and rates set forth in the Preferred Provider Contracts, and Defendant's unilateral Offer to treat Plaintiff as a Preferred Provider which was accepted by Plaintiff, Defendant was entitled to at most $3,761.48 from BCBSNC for the medical care and services provided to Plaintiff on October 6, 2012 in addition to the $150 co-pay from Plaintiff.

33. Pursuant to the General Consent and the terms and rates set forth in the Provider Contracts and Defendant's unilateral Offer to treat Plaintiff as a Preferred Provider which was accepted by Plaintiff, Defendant is entitled to, at most, a $150.00 co-payment from Plaintiff for the medical care and services provided to Plaintiff on October 6, 2012. Plaintiff made this payment to Defendant on or about October 6, 2012 satisfying his obligations to Defendant in full.

34. Upon information and belief, on or about January 14, 2013, Defendant received a check in the amount of $5,000.00 from Liberty Mutual, the automobile insurer for Plaintiff for which Plaintiff paid premiums for coverage, representing payment of the Medical Payments coverage part of the Plaintiff's automobile insurance policy.

35. At the time of the payment by Liberty Mutual, Defendant had been paid in full by BCBSNC and by Plaintiff for medical care and services provided to Plaintiff on October 6, 2012.

36. Upon information and belief, at some time after January 14, 2013, Defendant refunded or returned to BCBSNC the $3,761.48 payment made by BCBSNC on the Plaintiff's account.

37. Defendant has not refunded to Plaintiff any portion of the $150.00 co-payment paid by Plaintiff on October 6, 2012. Defendant has not refunded to Plaintiff any portion of the $5,000 payment made to Defendant by Liberty Mutual as a benefit to Plaintiff under Plaintiff's automobile insurance policy and has retained the funds for its own benefit and use.

38. On or about May 15, 2013 and on or about June 17, 2013, Defendant sent collection notices to Plaintiff requesting payment from Plaintiff in the amount of $3,084.73 and further stating, *inter alia*, that "there is a remaining balance on your account after all health insurance information provided by you at the time of service was processed. If you did not have health insurance coverage at the time of service, the balance is your responsibility."

39. The collection notices sent by Defendant on May 15, 2013 and June 17, 2013 constitute misleading misstatements of fact and misrepresent the extent to which Plaintiff's health insurance was processed by Defendant. Furthermore, the collection notices misstated the status of Plaintiff's accounts with regard to the amount owed by Plaintiff to Defendant.

40. At no time prior to or during Plaintiff's visit to WakeMed North did Defendant provide specific written or other notification to Plaintiff that Plaintiff may be held financially responsible for particular services not covered by BCBSNC or for any amounts in excess of the applicable co-pay amount.

41. At no time prior to or during Plaintiff's visit to WakeMed North did Defendant provide to Plaintiff any written or other notification that, despite Plaintiff being a member of BCBSNC, that Plaintiff may be responsible for the full amount of Plaintiff's medical charges and that Plaintiff may not be entitled to the benefit of the terms established by

Defendant's advertised Offer to treat patients, including Plaintiff, as a Preferred Provider of Health Benefit Plans, including Plaintiff's plan with BCBSNC, and by the Preferred Provider Contracts, including the rates established by such contracts, and that Plaintiff may not be entitled to the limitation of his liability to Defendant to $150.00 for the co-pay under the circumstances of this case.

42. At no time prior to or during Plaintiff's visit to WakeMed North did Defendant provide to Plaintiff any written or other notification that, despite Plaintiff being a member of BCBSNC, Defendant may not collect payment from BCBSNC or that Defendant would seek payment from Plaintiff or any source other than BCBSNC.

43. Following receipt of the $5,000.00 payment from Liberty Mutual and the issuance of the refund to BCBSNC, Defendant has refused to refund to Plaintiff any portion of the $5,000.00 received by Defendant despite the fact that Defendant is only entitled to payment for Plaintiff's medical care and services in two ways: (1) by Plaintiff for co-payments, coinsurance and/or deductibles and (2) payment by Plaintiff's health insurer BCBSNC pursuant to the terms and rates as set forth in the applicable Health Benefit Plan and the Preferred Provider Contracts.

44. As a result of Defendant's actions as set forth herein, Plaintiff has been damaged in an amount equal to or greater than $5,000.00 and Defendant has been correspondingly benefitted.

45. Upon information and belief, Defendant has collected or unjustly received payments for medical care and services in amounts that exceed co-payment, coinsurance and/or deductible obligations for numerous other patients, the identity of whom is presently unknown to Plaintiff, who have received treatment at Defendant's medical facilities and

who are also members of Health Benefit Plans who Defendant agreed to treat in exchange for the in-network benefits described in the applicable Preferred Provider Contracts and Health Benefit Plans and who, as a result, are entitled to have all of their medical expenses, if any, paid by their Health Benefit Plans, with the exception of co-payments, coinsurance and deductibles, pursuant to the Preferred Provider Contracts, Defendant's unilateral Offer to treat such patients as a Preferred Provider which was accepted by such patients, and the General Consent, thus causing damage unto said persons and benefiting Defendant.

46. Upon information and belief, Defendant has pursued collection policies and practices which put Defendant's financial interests ahead of the interests of Plaintiff's and those of the members of the Class, in ways that violate Defendant's obligations and duties as the attorney-in-fact for Plaintiff and members of the Class thus causing damage unto said persons and unjustly enriching Defendant.

CLASS ACTION ALLEGATIONS

47. This action is brought by Plaintiff as representative of all others similarly situated under the provisions of Rule 23(a) of the North Carolina Rules of Civil Procedure for compensatory damages, injunctive relief, court costs and attorneys' fees as set forth in more detail below.

48. The Class represented by Plaintiff in this action, and of which Plaintiff is himself a member, consists of all persons who received medical treatment at Defendant's medical facilities and who either 1) were forced to pay, had paid on their behalf, or are being asked to make payment for charges for medical care and services in an amount that violates the General Consent and/or exceeds the co-payment, coinsurance and/or

deductible obligation for said persons and/or the terms of the Health Benefit Plans and Preferred Provider Contracts and/or Defendant's Offer to treat such persons as an in-network provider pursuant to such Plans and Contracts or 2) did not receive the benefit of collection by Defendant as an attorney-in-fact of payment for medical services from a source or sources most favorable to the client among the sources known to Defendant acting as an attorney-in-fact or 3) were not refunded amounts received by Defendant in excess of amounts due for medical care and services provided by Defendant to said persons or 4) were sent collection notices that contained misleading misstatements of fact and misrepresentations regarding their accounts with Defendant.

49. Excluded from the Class are Defendant, any entity in which the Defendant has controlling interest, any employees, officers or directors of the Defendant, the legal representatives, heirs, successors, and assigns of Defendant, any judge or employee of the Court assigned to work on this lawsuit, and Plaintiff's attorneys and staff.

50. Plaintiff seeks actual and treble monetary damages to compensate Plaintiff and members of the Class for damages associated with the unlawful and unjustified collection of charges for medical care and services in amounts that violate the terms of General Consent, the terms of the applicable Preferred Provider Contracts and Health Benefit Plans and the Offer, and for the collection of charges from sources that are less favorable to Plaintiff and members of the Class than those from whom Defendant chose to collect.

51. Plaintiff seeks to enjoin Defendant from continuing to undertake collection efforts associated with charges for medical care and services in amounts that violate the terms of the General Consent, the Preferred Provider Contracts, the Health Benefit Plans and/or Defendant's Offer to treat as an in-network provider.

52. Common issues of law and fact predominate with respect to the issues raised herein. Common issues of law and fact include: a) the contractual obligations regarding payment for medical expenses as set forth in the General Consent, b) the policy and practice of Defendant seeking collection of amounts in violation of the General Consent, the Preferred Provider Contracts, the Health Benefit Plans and/or Defendant's Offer to treat as an in-network provider, c) the policy and practice of Defendant in seeking collection as an attorney-in-fact from sources more favorable to Defendant but less favorable to Plaintiff and the Class, d) the policy and practice of Defendant seeking collection from Plaintiff and members of the Class of amounts in excess of the amount due and owing for medical services rendered under applicable agreements including the General Consent, the Preferred Provider Contracts, the Health Benefit Plans and/or Defendant's Offer to treat as an in-network provider, e) the policy and practice of Defendant sending collection notices that contained misleading misstatements of fact and misrepresentations regarding their accounts with Defendant f) the policy and practice of Defendant of failing to refund to Plaintiff and the Class amounts paid to Defendant for medical services rendered where such payments exceed the amount Defendant is entitled to recover for the medical services, g) the appropriateness of an injunction to stop Defendant's wrongful behavior, h) applicability and application of the North Carolina Unfair and Deceptive Trade Practices Act, and i) the appropriateness of punitive damages including the appropriate amount of such damages.

53. The claims of the representative Plaintiff are typical of the claims of the Class members. The claims of all members of the Class, including the Plaintiff, depend on the showing that the acts and omissions of the Defendant gave rise to the rights of the Plaintiff to the

relief sought herein and in showing that the damages were caused by said acts and omissions of the Defendant. There is no conflict between the Plaintiff and any members of the Class with respect to this action or all of the claims for relief herein set forth.

54. Plaintiff will fairly and adequately protect the interests of the Class which he represents. The interests of the Plaintiff are consistent with those of the Class members.

55. Plaintiff and the Class is represented by experienced and able counsel who have expertise in the areas of tort law, trial practice, and class action representation.

56. The class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Because of the number and nature of common questions of fact and law, multiple separate lawsuits would not serve the interest of judicial economy.

57. The total relief and damages sought by Plaintiff, on his behalf and on behalf of members of the Class, exceed $10,000.00.

FIRST CLAIM FOR RELIEF - BREACH OF CONTRACT (COUNT 1)

58. Plaintiff incorporates by reference the allegations set forth above.

59. Plaintiff, members of the Class, and Defendant were parties to an agreement for medical services provided at Defendant's facilities in exchange for payment where such agreement included the terms of the General Consent described above.

60. Pursuant to the terms of the General Consent, Plaintiff and members of the Class did agree to receive medical treatment at Defendant's medical facilities and in exchange Plaintiff and members of the Class agreed to pay for charges due from Plaintiff and members of the Class in the form of co-payments, coinsurance and deductibles. On

October 6, 2012, as requested by Defendant, Plaintiff paid Defendant a $150.00 co-payment as required under his Health Benefit Plan and as requested by Defendant thus fulfilling Plaintiff's full obligations for payment to Defendant.

61. Pursuant to the terms of the General Consent, Defendant agreed to seek collection of benefits from any responsible third party including health benefit plans such as BCBSNC for the cost of medical care provided to Plaintiff and members of the Class.

62. Pursuant to the terms of the General Consent, Defendant agreed to refund to Plaintiff and members of the Class any amounts received by Defendant in excess of co-payments, deductibles, coinsurance and amounts owed by health benefit plans.

63. Defendant breached the terms of the General Consent in such a manner as to constitute a breach of contract by (1) failing to refund to Plaintiff credits due after payment of co-payments, deductibles, coinsurance and amounts due from Plaintiff's Health Benefit Plan,; (2) collecting, and seeking to collect, more money from Plaintiff, or on behalf of Plaintiff, for Plaintiff's medical care than was due as copayment, coinsurance and/or deductibles or otherwise.

64. As direct and proximate result of Defendant's breach of contract, Plaintiff and members of the Class have incurred damages as more fully set forth herein.

SECOND CLAIM FOR RELIEF – BREACH OF CONTRACT (COUNT 2)

65. Plaintiff incorporates by reference the allegations set forth above.

66. At all times relevant, Defendant offered to provide treatment as an in-network provider pursuant to applicable Preferred Provider Contracts and Health Benefit Plans.

67. At all times relevant, Defendant represented that members of, or participants in, such Health Benefit Plans for which Defendant was a Preferred Provider would have access to

Wakemed's health care system pursuant to the terms of applicable Preferred Provider Contracts and Health Benefit Plans and the Offer.

68. Plaintiff and members of the Class are members of, or participants in, Health Benefit Plans for which Defendant agreed and offered to provide treatment as an in-network Preferred Provider under Preferred Provider Contracts.

69. At all times relevant, Wakemed offered to treat Plaintiff and Class members as such an in-network Preferred Provider and to collect from Plaintiff and Class members only applicable co-payments, coinsurance and deductibles as provided in their Health Benefit Plans.

70. Plaintiff and members of the Class accepted Defendant's Offer of treatment and received treatment pursuant to such Offer.

71. Defendant has breached its contract with Plaintiff and members of the Class by failing to treat Plaintiff and members of the Class in accordance with the terms offered and accepted.

72. As a direct and proximate result of Defendant breach of contract, Plaintiff and members of the Class have incurred damages as more fully set forth herein including charges in excess of the amounts provided in their Health Benefit Plans.

THIRD CLAIM FOR RELIEF - BREACH OF CONTRACT (COUNT 3)

73. Plaintiff incorporates by reference the allegations set forth above.

74. Plaintiff and members of the Class are members of Health Benefit Plans for which Defendant has offered to provide treatment as a Preferred Provider.

75. Upon information and belief, at all times relevant, Defendant was a party to Preferred Provider Contracts with BCBSNC and affiliated or related entities offering Health Benefit Plans with in-network preferred providers.

76. Plaintiff and members of the Class are intended third-party beneficiaries of the Preferred Provider Contracts.

77. Defendant did breach the terms of the Preferred Provider Contracts proximately causing damages as more fully set forth herein unto Plaintiff and members of the Class by charging and collecting amounts for medical care and treatment that violate the terms, including the rates, fees and restrictions established by the Preferred Provider Contracts.

FOURTH CLAIM FOR RELIEF - UNFAIR AND DECEPTIVE TRADE PRACTICES

78. Plaintiff incorporates by reference the allegations set forth above.

79. The collection of insurance benefits for reimbursement of expenses for medical care provided to patients, including Plaintiff and members of the Class, is a practice which is "in or affecting commerce" and, as such, falls within the purview of N.C.G.S. § 75-1.1. Defendant acted as an attorney-in-fact and a collection agent for Plaintiff and the members of the Class and was not rendering professional services in undertaking the acts and practices about which Plaintiff complains.

80. Defendant's conduct as described herein constitutes unfair and deceptive trade practices in that Defendant:

a. Communicated false information to Plaintiff and members of the Class regarding the amount of charges owed for medical care and services provided by Defendant; and

b. Wrongfully, deceptively, and improperly charged Plaintiff and members of the Class amounts for medical care and treatment that exceeded the amounts allowed pursuant to the General Consent, the Preferred Provider Contracts, the Health Benefit Plans and/or Defendant's Offer to treat as an in-network provider, and further failed to refund amounts received in excess of the amounts allowed pursuant to the General Consent, the Preferred Provider Contracts, the Health Benefit Plans and/or Defendant's Offer to treat as an in-network provider.

81. As a direct and proximate result of Defendant's unfair and deceptive trade practices, Plaintiff, and members of the Class, have suffered monetary damages as described above and herein and are entitled to treble damages pursuant to N.C.G.S. § 75-16 and attorneys' fees pursuant to N.C.G.S. § 75-16.1.

FIFTH CLAIM FOR RELEIF – VIOLATION OF NORTH CAROLINA DEBT COLLECTION STATUTE

82. Plaintiff incorporates by reference the allegations set forth above.

83. Plaintiff and members of the Class are consumers pursuant to N.C.G.S. § 75.50(1).

84. Defendant is a debt collector within the meaning of N.C.G.S. § 75.50(3).

85. Defendant's actions as more fully described herein constitute the acts of a debt collector pursuant to Chapter 75, Article 2 of the North Carolina General Statutes.

86. Defendant did violate Chapter 75, Article 2, specifically N.C.G.S. § 75-54(4), by sending collection notices that contained misleading misstatements of fact and misrepresentations regarding the patient accounts with Defendant.

87. As a direct and proximate result of Defendant's violation of Article 2, Chapter 75 of the North Carolina General Statutes, Plaintiff, and members of the Class, have suffered

monetary damages as described above and herein and are entitled to actual damages plus civil penalties as set forth in N.C.G.S. § 75-56 including, but not limited to, an amount not less than $500.00 nor greater than $4,000.00 for each violation by Defendant.

SIXTH AND SEVENTH CLAIMS FOR RELIEF –
BREACH OF FIDUCIARY DUTY AND CONSTRUCTIVE FRAUD

88. Plaintiff incorporates by reference the allegations set forth above.

89. As a result of the relationship between Defendant and Plaintiff, and members of the Class, including Defendant's role as an attorney-in-fact, Defendant owes Plaintiff and the Class fiduciary duties.

90. Among the fiduciary duties owed by Defendant to Plaintiff and members of the Class is the duty to act on Plaintiff's behalf and in Plaintiff's best interests in the processing of matters related to Plaintiff's health benefits and in seeking payment from available sources for medical services provided to Plaintiff and the Class.

91. Defendant did breach its fiduciary duties by, among other things, communicating false information to Plaintiff and members of the Class regarding the amount of charges owed for medical care and services provided by Defendant, wrongfully, deceptively, and improperly charging Plaintiff and members of the Class amounts for medical care and treatment that exceeded the amounts allowed pursuant to the General Consent, the Preferred Provider Contracts, the Health Benefit Plans and/or Defendant's offer to treat as an in-network provider, failing to refund amounts received in excess of the amounts allowed pursuant to the General Consent, the Preferred Provider Contracts, the Health Benefit Plans and/or Defendant's offer to treat as an in-network provider, pursuing collection policies and practices which put Defendant's financial interests ahead of

Plaintiff's and those of the Class, failing to pursue collection from sources favorable to Plaintiff and members of the Class, and altering and modifying its billings and charges to enable collections from sources more favorable to Defendant but less favorable to Plaintiff than otherwise were available.

92. Defendant did breach its fiduciary duties owed to Plaintiff and members of the Class in a manner that sought to benefit Defendant and did in fact benefit Defendant.

93. Defendant's breach of fiduciary duties owed to Plaintiff and members of the Class proximately caused damages to Plaintiff and members of the Class as more fully set forth herein and such breach constitutes a constructive fraud.

EIGHTH CLAIM FOR RELIEF – CONVERSION

94. Plaintiff incorporates by reference the allegations set forth above.

95. Defendant has in its possession or has converted to its use funds due, owing and belonging to Plaintiff and members of the Class.

96. The possession of the funds due, owing and belonging to Plaintiff and members of the Class is wrongful and constitutes conversion under North Carolina law.

97. As a direct and proximate result of Defendant's conversion of funds due, owing and belonging to Plaintiff and members of the Class, Plaintiff has suffered damages as more fully set forth herein.

NINTH CLAIM FOR RELIEF – INJUNCTIVE RELIEF

98. Plaintiff incorporates by reference the allegations set forth above.

99. As a direct and proximate result of Defendant's acts and/or omissions as described above, Plaintiff and the Class members are entitled to injunctive relief such that Defendant is

ordered and enjoined from continuing to undertake collection efforts associated with charges for medical and services in amounts that exceed the rates and fees set forth in the Preferred Provider Contracts, the Health Benefit Plans and/or Defendant's Offer to treat as an in-network provider.

100. As a further direct and proximate result of Defendant's acts and/or omissions as described above, Plaintiff and the Class members are entitled to injunctive relief such that Defendant is ordered and enjoined from continuing to act in a manner contrary to Defendant's obligations as the attorney-in-fact for the collection of third-party benefits including health benefits for medical care and services provided by Defendant.

WHEREFORE, Plaintiff prays the Court as follows:

1. That after due proceedings, this action be certified as a class action pursuant to Rule 23 of the North Carolina Rules of Civil Procedure;
2. That in due course, this action proceed as a class action, pursuant to the above named provisions, to judgment as therein provided in favor of Plaintiff, and the class Plaintiff represents, and against Defendant;
3. That Plaintiff, and the Class Plaintiff represents, have and recover damages of the Defendant pursuant to the claims for relief set out in this Complaint including treble damages and civil penalties;
4. That Plaintiff, and the Class Plaintiff represents, have a constructive trust established and accounting ordered as to funds obtained by Defendant pursuant to the General Consent;

5. That Plaintiff, and the Class Plaintiff represents, have injunctive relief against Defendant as set forth in the Complaint;

6. That Plaintiff, and the Class Plaintiff represents, have and recover prejudgment and post judgment interest at the maximum legal rate;

7. That the Plaintiff, and the Class Plaintiff represents, have and recover attorneys' fees as allowed by law;

8. That the Plaintiff, and the Class Plaintiff represents, have and recover the costs of this action as allowed by law; and

9. For such other and further relief as the Court deems just and proper.

PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

This the 30th day of December, 2014.

J. Michael Malone, Esq.
N.C. State Bar No.: 26512
Hendren & Malone, PLLC
4600 Marriott Drive
Suite 150
Raleigh, NC 27612
mmalone@hendrenmalone.com
Telephone: (919) 573-1423
Facsimile: (919) 420-0475

Robert E. Fields III
NC Bar 12946
Oak City Law LLP
702 North Blount Street
Raleigh, NC 27604
Rob.Fields@OakCityLaw.com
Phone: (919) 899-9655
Fax: (919) 516-0572

CERTIFICATE OF SERVICE

I hereby certify that I this day have served a copy of this pleading upon the other parties to this action by US Mail to the following counsel for Defendant and that it has been sent to the below identified recipients via email pursuant to the Case Management Order #1, this 30th day of December, 2014.

J. Michael Malone, Esq
Hendren & Malone, PLLC
4600 Marriott Drive
Suite 150
Raleigh, NC 27612
mmalone@hendrenmalone.com
Telephone: (919) 573-1423
Facsimile: (919) 420-0475

TO:

William R. Forstner
Maureen Demarest Murray
Mark A. Finkelstein
Smith Moore Leatherwood
434 Fayetteville St., 2800
Raleigh, NC 27601
*Attorneys for Defendant*

Email Recipients:

bill.forstner@smithmoorelaw.com
maureen.murray@smithmoorelaw.com
mark.finkelstein@smithmoorelaw.com
sherrie.peacock@smithmoorelaw.com
joyce.wagner@smithmoorelaw.com
julierodon@smithmoorelaw.com
rob.fields@oakcitylaw.com
mmalone@hendrenmalone.com
danielle.wilburn@oakcitylaw.com
sam.pinero@oakcitylaw.com