

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

JAMES J. MAZUR, DPM, and)
JAMES MAZUR, D.P.M., P.A., on behalf of)
themselves and all other individuals and entities)
similarly situated,)

Plaintiffs,)

v.)

STERICYCLE, INC.,)

Defendant.)
_____)

Case No.: _____

CLASS ACTION COMPLAINT

Plaintiffs, James J. Mazur, DPM, and James Mazur D.P.M., P.A., bring this action on behalf of themselves and all individuals and entities (as defined below) similarly situated in North Carolina (hereinafter referred to as “Plaintiffs”) against Defendant Stericycle, Inc. (“Stericycle” or “Defendant”).¹

NATURE OF THE ACTION

1. Plaintiffs bring this lawsuit on behalf of themselves and on behalf of all similarly situated individuals and entities in North Carolina who contracted with Stericycle, except those specifically excluded below in the Class Representation Allegations, for injuries caused by Stericycle’s fraudulent, misleading and wrongful conduct associated with overbilling for their services. That conduct and the resulting legal claims arising from it are detailed below.

2. Stericycle is a large publically-traded company that has been in the medical waste collection and disposal industry since 1989. Stericycle provides medical waste collection and

¹ In an abundance of caution this action is being brought by James J. Mazur, DPM as well as his business, James Mazur, D.P.M., P.A.

disposal services for medical clinics, veterinary clinics, medical labs, municipal jails, and other businesses that generate regulated medical waste worldwide. Stericycle's business generates substantial revenues – in 2012, it posted \$1.9 billion in revenue.

3. When Stericycle picks up a new customer, Stericycle offers its standard agreement, called the Steri-Safe Contract (the "Standard Contract"), which is a one to five -year fixed-price agreement for monthly or quarterly waste pick-up.

4. Stericycle quotes the customer a monthly pick-up rate and agrees to this rate in the Standard Contract. But Stericycle fails to inform its customer that even the first bill the customer receives is going to be greater than what the Standard Contract called for.

5. Stericycle uses an internal electronic billing and account software system called Tower. Stericycle executives directed that the Tower system's programming default to an 18% automated price increase for small-quantity, non-institutional customers, which in 2012, made up 97% of Stericycle's 541,000 customers worldwide.

6. On April 28, 2008, a former Stericycle employee named Jennifer D. Perez as a Relator filed a False Claims Act "qui tam" action on behalf of the United States of America in the United States District Court for the Northern District of Illinois (hereinafter referred to as the "Qui Tam Complaint"). The complaint alleged that Ms. Perez personally witnessed Stericycle routinely adding undisclosed charges to its customers' bills. She had been hired by Stericycle as a temp and soon moved into a full-time position in the collections department. Ms. Perez noticed that Stericycle was billing the federal accounts in violation of the federal acquisition regulations. In 2006, she was promoted to the position of government specialist, and was put in charge of resolving and preventing disputes with the federal accounts.

7. Ms. Perez discovered that Stericycle was routinely billing all small-quantity customers, including government customers, the periodic 18% increases, surcharges, as well as billing the government in advance of service.

8. The Qui Tam Complaint alleged based on the Relator's personal knowledge how Stericycle, as part of its billing routine, adds 'fuel and energy' surcharges to each bill, without disclosing this to the customer during negotiations. These fuel and energy surcharges bear no relationship toward Stericycle's actual costs regarding the particular customer. This is demonstrated by the fact that Stericycle will add on these surcharges during periods when there have been no pick-ups, even for years. And within 9 months, and every 9 month period hence, the entire bill, (the monthly rate plus surcharges), is subjected to an 18% increase.

9. Stericycle falsely represented to Plaintiffs and the other class members that rates in the Standard Contract would remain fixed over its tenure, when in fact the rates were unilaterally increased by 18% or more every 9 to 12 months without justification.

10. Stericycle breached the Standard Contract with Plaintiffs and others similarly situation by regularly and systematically raising its prices without any explanation or justification and without prior notice, of the price increase. Stericycle unlawfully and fraudulently misled customers about its pricing and billing practices and induced them to become or remain customers by falsely representing that the rates for its services were fixed, failing to disclose its practice of arbitrarily increasing prices, failing to notify customers that prices had increased, and lying about the reasons for price increases when challenged.

PARTIES

11. Plaintiff James J. Mazur is a doctor of podiatric medicine and a citizen of North Carolina who resides in Salisbury, North Carolina. He operates a privately-owned medical

practice, James Mazur, D.P.M., P.A., which is also a Plaintiff to this action, and is located at 322 Mocksville Ave., Salisbury, North Carolina 28144. Dr. Mazur's practice focuses on serving and caring for needful medical patients and ordinarily relies on and trusts its third party vendors to be truthful and to act in good faith in their business dealings with the practice. As part of his practice, Dr. Mazur's office has to dispose of medical waste collected or obtained while treating patients.

12. Defendant, Stericycle, is a Delaware corporation with a principal place of business located at 28161 North Keith Drive, Lake Forest, Illinois. Its registered agent is located at CT Corporation System, 150 Fayetteville Street, Box 1011, Raleigh, NC 27601-2957. At all material times, Stericycle has operated a medical waste removal and transportation service in North Carolina for businesses such as Plaintiffs'.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A) because this case is a class action where the aggregate claims of all members of the proposed class are in excess of \$5,000,000.00, exclusive of interest and costs, and Plaintiffs, as well as the members of the proposed class, are citizens of states different from the state of Defendant.

14. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action because a substantial part of the events, omissions, and acts giving rise to the claims herein occurred in this District. Plaintiffs are citizens of this District and entered into the Standard Contract in this District. This Court has personal jurisdiction over Defendant because Defendant has sufficient minimum contacts with North Carolina in that it has conducted and continues to conduct business in the State of North Carolina or otherwise availed itself of the North Carolina market through medical waste removal and transportation services sufficient to

render the exercise of personal jurisdiction over them by this Court consistent with traditional notions of fair play and substantial justice.

FACTS CONCERNING THE CLASS REPRESENTATIVE

15. Plaintiff, Dr. James J. Mazur, is a doctor of podiatric medicine with a privately-owned medical practice based in Salisbury, North Carolina, known as James Mazur, D.P.M., P.A. As part of his practice, Plaintiffs have need for safe removal of medical waste, including drugs and medical supplies.

16. In mid-2003, Dr. Mazur contracted with Stericycle for medical waste pick-up services on a month-to-month basis. At that time, Stericycle charged Plaintiffs approximately \$35.00 a month to remove medical waste. Between mid-2003 and 2008, the amount billed by Stericycle on a monthly basis fluctuated minimally and was even occasionally less than \$35.00. In 2008, the price for removal increased to approximately \$71.16 per month. The actual amount billed each month continued to fluctuate relatively minimally on a frequent basis.

17. On or about May 2013, Lauren Kokenes, a sales representative from Stericycle, emailed Plaintiffs a new contract offer that would remain fixed at \$139.00 per month, for four container pick-ups per year if he agreed to enter into the Standard Contract.

18. On or about May 2013, Stericycle emailed a copy of the Standard Contract to Plaintiffs. The Standard Contract required customers to agree to a 60-month (or five year) term which automatically renewed unless either party terminated the agreement in the manner stated in the Standard Contract. In paragraph 2 -- "Terms and Pricing" -- the Standard Contract set forth the pricing terms:

Subject to the provisions below, the term ("Term") of this Agreement shall be 60 months from the Effective Date. (a) This agreement shall automatically renew for successive terms equal to the original Term (each an "Extension Term") unless either party has given sixty (60) days notice, in writing, during the six (6) month

period prior to the renewal date of its desire to terminate this agreement. All Extension Terms shall be subject to the terms and conditions hereunder. (b) Stericycle reserves the right to adjust the contract price to account for operational changes it implements to comply with documented changes in the law, to cover increases in the cost of fuel, insurance, or residue disposal, or to otherwise address cost escalation.

19. A copy of the Standard Contract is attached as Exhibit A. The monthly service fee as stated in the Contract was \$139.00.

20. Plaintiff, James J. Mazur, DPM, electronically signed the Standard Contract and sent a copy back to Stericycle on May 28, 2013.

21. In entering into an agreement with Stericycle for waste removal, Plaintiffs relied on the stated monthly service fee of \$139.00 for four waste pick-ups per year. Plaintiffs also relied upon the language in the Standard Contract's Terms and Pricing clause that the fee would only increase for the purposes listed in the Contract. These terms were material to Plaintiffs and would not have entered into the Standard Contract had they known that these representations were false and that Stericycle intended to breach the Standard Contract by charging undisclosed charges and increasing the agreed-upon price without notice or justification.

22. In 2013 and 2014, Dr. Mazur was never charged the agreed-upon price of \$139.00. Immediately after entering into the Standard Contract, Dr. Mazur was charged \$241.00 in June 2013. (Exhibit B). No explanation was given for the increased fee.

23. In July 2013, Dr. Mazur received a monthly bill for \$156.00. Again, no information or explanation was provided with the bill to explain the increased monthly fee.

24. Between August 2013 and November 2013, Dr. Mazur received monthly bills for the following amounts: \$154.59 (August); \$156.00 (September); \$154.62 (October); and \$156.00 (November). All of these monthly bills exceeded the \$139.00 stated in the Standard Contract.

As with the bills before them, no information or explanation for the price increase was offered or provided by Stericycle.

25. In January 2014, the monthly fee increased again to \$182.00. Defendant billed Plaintiffs twice in February on the 1st and the 17th, each time for \$182.00. No explanation was given for the price increase.

26. In March 2014, Defendant billed Plaintiffs \$183.00 for medical waste removal. No explanation was provided for the price increase. Beginning in June 2014, Plaintiffs were billed the following amounts for medical waste removal: \$203.00 (June); \$417.00 (July); \$220.00 (September); \$208.00 (October); \$215.00 (November); and \$249.00 (December). As with all the prior bills, Defendant did not provide any explanation or justification for the price increase.

27. When Plaintiffs called Stericycle to complain about the unexplained increases. Stericycle told Plaintiffs that these rates were authorized in the Terms and Prices Clause of the Standard Contract.

28. In January 2015, Plaintiffs contacted Stericycle representative, Parag Deshpande, to complain about the increased fee and the undisclosed additional charges. Mr. Deshpande indicated that Stericycle could offer a revised contract that would offer Dr. Mazur a better rate. This statement was false. The supposed “revised” contract offered only two pick-ups per year for \$145.59 per month. (Exhibit C).

29. On January 14, 2015, D. Mazur responded by email to Mr. Deshpande stating:

Per our conversation yesterday, the revised contract would be a better rate. However, the current agreement is at a lower rate. Why in the world would I sign the newer agreement? It is imperative that I lower what I pay. I certainly will not extend the length of service. Also, the newer agreement provides far fewer services. This is not acceptable.

(Exhibit D).

30. On January 14, 2015, Mr. Despande replied by email stating:

Per your current agreement on file, you are subject to price increases. That is why your current agreement on file does not reflect your current rate. You may read more about price increases in section 2 of the terms and conditions. We cannot negotiate the early termination penalties. If you choose to cancel service, you will be responsible for early termination penalties.

(Exhibit E).

31. This statement by Mr. Despande was also false. In 2003, Stericycle pledged not to hold customers to long-term contracts as part of a settlement with the states of Arizona and Utah over alleged anti-trust violations.

32. Stericycle maliciously continued to add undisclosed charges to Plaintiffs' bills even after having this practice exposed by its former employee in 2008.

CLASS REPRESENTATION ALLEGATIONS

33. Plaintiffs seek to represent a class defined as all individuals and entities in North Carolina who entered into the Standard Contract for medical waste pick-up services with Stericycle (the "Class"). Specifically excluded from the Class are all governmental entities, Stericycle, Stericycle's affiliates, parents, subsidiaries, employees, officers, directors, and co-conspirators. Also excluded is any judicial officer presiding over this matter and the members of their immediate families and judicial staff.

34. Members of the Class are so numerous that their individual joinder herein is impracticable. The precise number of Class members and their identities are unknown to Plaintiffs at this time but may be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication through Stericycle's records.

35. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Common legal and factual questions

include, but are not limited to whether Stericycle (i) represented that it would not charge undisclosed charges under the Standard Contract, (ii) entered into the Standard Contract for a fixed price with Class members, (iii) breached the Standard Contract by charging Class members the undisclosed charges, and (iv) in so doing, violated the Illinois Consumer Fraud and Deceptive Business Practices Act as well as the North Carolina Unfair and Deceptive Trade Practices Act.

36. The claims of the named Plaintiffs are typical of the claims of the Class in that the named Plaintiffs entered into the Standard Contract and were charged the Undisclosed Charges.

37. Plaintiffs are adequate representatives of the Class because their interests do not conflict with the interests of the Class members they seek to represent, they have retained competent counsel experienced in prosecuting class actions, and they intend to prosecute this action vigorously. The interests of Class members will be fairly and adequately protected by Plaintiffs and their counsel.

38. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Class members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendant's liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of

Defendant's liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

CLAIMS FOR RELIEF

COUNT I **Breach of Contract**

39. Plaintiffs reallege and incorporate by reference the allegations contained in all preceding paragraphs of this complaint as if fully alleged herein.

40. Plaintiffs bring this claim individually and on behalf of the members of the proposed Class against Stericycle.

41. As discussed above, Plaintiffs and Class members entered into a legally binding Standard Contract with Stericycle, which is a 1 to 5-year fixed-price agreement calling for monthly or quarterly waste pick-up.

42. Stericycle made an offer to enter into an agreement by sending a copy of the Standard Contract to Plaintiffs and Class members.

43. Plaintiffs and Class members accepted the Standard Contract by signing it and returning it to Stericycle.

44. The Standard Contract provided for Plaintiffs and Class members to receive a fixed price in return for a long-term commitment.

45. Plaintiffs and Class members have performed all of their duties and obligations under the Standard Contract, except those excused by Stericycle's nonperformance.

46. Stericycle materially breached the aforementioned Standard Contract by depriving Plaintiffs and Class members of the benefit of their bargain by intentionally, purposefully, and/or negligently adding the Undisclosed and/or Unjustified Charges to their bills.

47. Stericycle misrepresented to Plaintiffs and Class members that the

Undisclosed and/or Unjustified Charges were allowable under the Standard Contract because they correlated to escalating operating costs, though they did not.

48. As a direct and proximate result of Stericycle's breach of the Standard Contract, Plaintiffs and Class members have and will continue to suffer damages.

COUNT II
Violations of the North Carolina Unfair and Deceptive Trade Practices Act
(N.C. Gen. Stat. § 75-1.1, *et seq.*)

49. Plaintiffs reallege and incorporate by reference the allegations contained in all preceding paragraphs of this complaint as if fully alleged herein.

50. North Carolina's Unfair and Deceptive Trade Practices Act, N.C. GEN. STAT. §§ 75-1.1, *et seq.* ("NCUDTPA"), prohibits a person from engaging in "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce[.]" The NCUDTPA provides a private right of action for any person injured "by reason of any act or thing done by any other person, firm or corporation in violation of" the NCUDTPA. N.C. GEN. STAT. § 75-16.

51. Stericycle's acts and practices complained of herein were performed in the course of its trade or business and thus occurred in or affected "commerce," which includes Stericycle's medical waste disposal services as defined in N.C. GEN. STAT. § 75-1.1(b).

52. In the course of Stericycle's business, it knowingly failed to disclose and actively concealed material facts and made false and misleading statements regarding the prices it charged its customers, the reasons for price increases it imposed, and the amounts owed to it for services it performed. In addition, Stericycle engaged in other unfair or deceptive trade practices, including advertising its Steri-Safe service with the intent not to sell it at the prices advertised; disclosing and advertising its prices to customers in a manner calculated or tending to

deceive Stericycle customers; omitting material facts in describing its services and the prices it would charge; knowingly making false and misleading statements of fact regarding the supposed price reductions it offered to customers who complained about Stericycle's price increases, misrepresenting to customers the rights, remedies or obligations of the agreement between them, and invoicing Plaintiffs and Class members for amounts it knew were not rightfully owed under its agreements, thereby obtaining money through false and fraudulent representations.

53. Plaintiffs and members of the Class relied upon Stericycle's false and misleading representations and omissions in deciding whether to enter into contracts with Stericycle or continue using Stericycle for medical waste collection and removal.

54. Stericycle's conduct proximately caused injuries to Plaintiffs and the Class.

55. Plaintiffs and the other Class members were injured as a result of Stericycle's conduct in that Plaintiffs and the other Class members overpaid for the medical waste disposal services they purchased and did not receive the benefit of their bargain. These injuries are the direct and natural consequence of Stericycle's misrepresentations and omissions.

56. Plaintiffs, individually and on behalf of the other Class members, seek actual and treble damages pursuant to N.C. GEN. STAT. § 75-16, all other damages and remedies allowed for by the statute, and an award of attorneys' fees pursuant to N.C. GEN. STAT. § 75-16.1.

COUNT III
Violation of the Illinois Consumer Fraud And Deceptive Business Practices Act
(815 ILCS 505/1, *et seq.*)

57. Plaintiffs hereby reallege and incorporate by reference the allegations contained in all preceding paragraphs of this complaint as if fully set forth herein.

58. Plaintiffs bring this claim individually and on behalf of the members of the proposed Class against Stericycle.

59. The Standard Contract Plaintiffs signed states that “[t]his Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to the conflicts of laws or rules of any jurisdiction.

60. The Standard Contract violates Illinois law. Pursuant to 815 ILCS 505/10a, the Illinois Consumer Fraud and Deceptive Business Practices Act applies to business entities because the conduct complained of invokes trade practices addressed to market generally or otherwise implicates consumer protection concerns, and these claims meet consumer nexus test because the conduct involves trade practices directed to market generally or otherwise relates to consumer protection issues.

61. Pursuant to 815 ILCS 505/10a, the Illinois Consumer Fraud and Deceptive Business Practices Act applies to the Standard Contract, which is governed by the laws of the State of Illinois.

62. Stericycle made misrepresentations in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act and is therefore subject to claims by Plaintiffs and the Class.

63. Stericycle’s actions and omissions as alleged herein, constitute unfair or deceptive acts or practices in the conduct of trade or commerce within the meaning of the Illinois Consumer Fraud and Deceptive Business Practices Act, and they misled customers, including Plaintiffs and the Class members.

64. Specifically, the immoral, unethical, oppressive, and unscrupulous actions and omissions of Stericycle and its sales representatives in marketing and selling its services were material to Plaintiffs’ and the Class members’ decisions to enter into the Standard Contract, and thus create liability under this law. These actions and omissions offended public policy by

violating contract law.

65. Plaintiffs and the Class members sustained a substantial injury as a result of Stericycle's unfair and deceptive conduct, and seek injunctive relief to require Defendant to alter its conduct relating to charging unallowable price increases to its customers under the Standard Contract.

66. Plaintiffs and Class members are also entitled to actual damages, reasonable attorneys' fees, and any other appropriate legal and equitable relief allowable under the Illinois Consumer Fraud and Deceptive Business Practices Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, seek judgment against Defendant, as follows:

A. For an order certifying the Class under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representatives of the Class and Plaintiffs' attorneys as Class Counsel to represent the Class members;

B. For an order declaring the Defendant's conduct violates the statutes referenced herein;

C. For an order finding in favor of Plaintiffs and the Class on all counts asserted herein;

D. For compensatory, treble and punitive damages in amounts to be determined by the Court and/or jury;

E. For prejudgment interest on all amounts awarded;

F. For an order of restitution and all other forms of equitable monetary relief;

G. For injunctive relief as pleaded or as the Court may deem proper; and

H. For an order awarding Plaintiffs and the Class his reasonable attorneys' fees and expenses and costs of suit.

A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.

Respectfully submitted, this the 12th day of March, 2015.

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EXHIBITS

- A. Standard Contract.
- B. Exemplar billing records.
- C. Revised contract.
- D. Email.
- E. Email