

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CIVIL FILE NO.: 16 CVS 188

CHRISTOPHER JENKINS,	)	
On behalf of himself and all others	)	
similarly situated,	)	
Plaintiff,	)	
	)	CLASS ACTION COMPLAINT
vs.	)	
	)	
THE MOSES H. CONE MEMORIAL	)	
HEALTH SERVICES CORPORATION;	)	
THE MOSES H. CONE MEMORIAL	)	
HOSPITAL, INCORPORATED;	)	
THE MOSES H. CONE MEMORIAL	)	
HOSPITAL;	)	
THE MOSES H. CONE MEMORIAL	)	
HOSPITAL OPERATING	)	
CORPORATION;	)	
AVECTUS HEALTHCARE	)	
SOLUTIONS, LLC;	)	
	)	
Defendants.	)	

COMES NOW PLAINTIFF, by and through counsel, and on behalf of himself and all others similarly situated, alleges as follows against Defendants jointly and severally:

NATURE OF THE ACTION

1. This is a class action seeking compensatory damages 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 the Moses Cone Defendants and/or were the subject of collection efforts by the Moses Cone Defendants and/or their debt collection agent Avectus Healthcare Solutions, LLC ("Avectus").

3. Plaintiff brings this case against Defendants because:
 - a. Moses Cone and their debt collection agent Avectus wrongfully sent improper collection notices and collected payments for medical services in amounts that violate (1) the terms of the Services Provider Agreement entered into by Defendants Moses Cone with Blue Cross and Blue Shield of North Carolina (“BCBSNC”) of which Plaintiff, and certain members of the class, are members, (2) the terms of the Moses Cone Defendants’ offer (the “Offer”) to Plaintiff and Moses Cone Class Members to treat them as an in-network provider of health care services pursuant to the terms of applicable Services Provider Agreement, (3) the terms of the General Consent for treatment executed by Plaintiff with Moses Cone, and (4) North Carolina debt collection laws.
 - b. Moses Cone breached its duty as attorney-in-fact for Plaintiff by seeking reimbursement from Plaintiff and beyond the contractually agreed amounts due for the medical services provided.
 - c. Consequently, Plaintiff and members of the class have suffered damages and are entitled to the relief set forth herein.

PARTIES

4. Plaintiff Christopher Jenkins (hereinafter “Jenkins”) is a resident of Jacksonville, Florida and he appears herein in his individual capacity and as a representative of the class more fully set forth herein.
5. Upon information and belief, defendants The Moses H. Cone Memorial Health Services Corporation, The Moses H. Cone Memorial Hospital, Incorporated, The Moses H. Cone Memorial Hospital, The Moses H. Cone Memorial Hospital Operating Corporation are

North Carolina corporations headquartered and with their principal place of business in Guilford County, North Carolina (collectively referred to as “Moses Cone”).

6. Avectus Healthcare Solutions LLC (“Avectus”) is a Delaware corporation, with its principal place of business in Mississippi, licensed to do business in the State of North Carolina by the North Carolina Secretary of State with its registered agent located in Wake County, North Carolina.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter pursuant to 29 U.S.C. § 1132(e)(1) and 28 U.S.C. 1332.
8. Venue is proper in this Court under 29 U.S.C. § 1132(e)(2) and 28 U.S.C. § 1391(b)(2).

FACTUAL ALLEGATIONS

9. On October 17, 2013, Plaintiff was injured in an accident with an at-fault motor vehicle while riding a motorcycle in Greensboro, Guilford County, North Carolina.
10. Following the accident, Plaintiff sought medical care at Defendant Moses Cone’s hospital facility commonly known as The Moses H. Cone Memorial Hospital and/or Moses Cone and/or Cone Health located at or near 1200 North Elm Street in Greensboro, North Carolina.
11. As of October 17, 2013, Plaintiff was a Member and beneficiary of an employee welfare benefit plan pursuant to 29 U.S.C. 1002(1) that is administered in Wake County, North Carolina.
12. Plaintiff received treatment at Moses Cone on October 18, 2013 for his injuries sustained in the above referenced accident.

13. Subsequent to Plaintiff's medical care at Moses Cone, Moses Cone generated a bill indicating standard charges for the medical care totaling \$1,034.00.
14. At the time of treatment at Moses Cone, Moses Cone presented Plaintiff with a form titled "General Consent" which Plaintiff signed as requested by Moses Cone.
15. The General Consent form signed by Plaintiff made Moses Cone an attorney-in-fact for Plaintiff regarding the collection of benefits from third-parties for Plaintiff's medical expenses.
16. Upon information and belief, the General Consent form signed by Plaintiff is commonly signed by patients seeking and receiving treatment at Defendant Moses Cone's medical facilities including members of the Class.
17. Upon information and belief, at all times relevant, Moses Cone and BCBSNC had entered into an agreement for the purpose of providing, *inter alia*, medical care to members of BCBSNC including Plaintiff and members of the Class (hereinafter "Services Provider Agreement").
18. The care provided to Plaintiff at Moses Cone constitutes Covered Services under the Services Provider Agreement.
19. At all times relevant, Moses Cone represented to Plaintiff and members of the Class that Moses Cone maintained the Services Provider Agreement with BCBSNC for the benefit of individuals who were members of BCBSNC including Plaintiff and members of the Class and that Moses Cone was an in-network provider for BCBSNC.
20. At all times relevant, Moses Cone represented that members of BCBSNC, including Plaintiff and members of the Class, would have access to Moses Cone's health care

system on the terms of Moses Cone's Services Provider Agreement with BCBSNC and Moses Cone offered to treat Plaintiff and members of the Class on this basis.

21. At the time of Plaintiff's admission to Moses Cone, Plaintiff presented to Moses Cone documentation indicating that Plaintiff was a member of a health insurance plan administered, maintained or serviced by BCBSNC ("Evidence of Coverage").
22. At the time of Plaintiff's treatment at Moses Cone, Plaintiff accepted Moses Cone's Offer to treat Plaintiff on an in-network basis and in accordance with the Services Provider Agreement.
23. Pursuant to the terms contained in the General Consent form and the Offer, Moses Cone agreed to only collect insurance benefits from BCBSNC for Plaintiff's medical care at Moses Cone and Moses Cone further agreed to refund to Plaintiff any overpayments received by Moses Cone from any payment source.
24. Upon information and belief, the Services Provider Agreement establishes the payment terms and payment rates for medical care and services provided by Moses Cone to members of BCBSNC, including Plaintiff and members of the Class, and that such terms and rates are agreed to by Moses Cone as part of the Services Provider Agreement and as part of the Offer to treat Plaintiff and members of the Class on an in-network basis.
25. Plaintiff and members of the Class are intended third-party beneficiaries of the Services Provider Agreement and are the intended and protected beneficiaries of the regulatory scheme authorizing these contracts.
26. Plaintiff and certain members of the Class are entitled to the terms and rates agreed to by Moses Cone as part of the Services Provider Agreement.

27. The terms of the Services Provider Agreement are incorporated by reference, implication and/or reliance upon Defendant Moses Cone's representations regarding its status as a BCBSNC in-network provider, into the General Consent executed by Plaintiff and members of the Moses Cone Class and into the Offer.
28. Plaintiff and certain members of the Class are entitled to the terms and rates agreed to by Moses Cone as part of the Services Provider Agreement regardless of the source of payment for the incurred medical expenses.
29. The General Consent form and the Offer created an obligation for Defendant Moses Cone to provide medical care to Plaintiff in exchange for payment only 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 Services Provider Agreement.
30. Pursuant to the Evidence of Coverage and the Services Provider Agreement, the terms of the General Consent, and/or the terms of the Offer, Plaintiff was personally obligated to make a co-payment of only \$150.00 to Moses Cone for Plaintiff's medical treatment on October 18, 2013. Plaintiff, through his representatives, has made this payment to Moses Cone.
31. At no time prior to or during Plaintiff's visit to Moses Cone did Moses Cone provide specific written 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-payment amount.
32. At no time prior to or during Plaintiff's visit to Moses Cone did Moses Cone provide to Plaintiff any written notification that, despite Plaintiff being a member of BCBSNC,

Plaintiff would 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 Moses Cone's advertised Offer to treat patients, including Plaintiff, as an in-network Preferred Provider for BCBSNC and in accordance with the Services Provider Agreement, including the rates established by such agreement, and that Plaintiff may not be entitled to the limitation of his individual liability to Moses Cone to \$150.00 for the co-pay under the circumstances of this case.

33. At no time prior to or during Plaintiff's visit to Moses Cone did Defendant Moses Cone provide to Plaintiff any written or other notification that, despite Plaintiff being a member of BCBSNC, Moses Cone would seek payment from Plaintiff or any source other than BCBSNC for Plaintiff's medical treatment.
34. Upon information and belief, Defendant Avectus was, at all times relevant, the collection agent and/or debt collector for Moses Cone regarding the collection of medical bills for patients of Moses Cone including the Plaintiff and some or all members of the Class.
35. On or about November 7, 2013, Moses Cone, acting through Moses Cone's debt collection agent Avectus, did send correspondence to counsel for Plaintiff indicating notice of a lien for Defendant Moses Cone, pursuant to N.C.G.S. 44-49, in the amount of \$1,034.00 against any sums recovered as damages for personal injuries by Plaintiff as a result of the above described accident.
36. The lien notice sent by Moses Cone claimed a lien that exceeded the amount Plaintiff was obligated to pay Moses Cone pursuant to (1) the General Consent; and (2) the terms and rates set forth in the Services Provider Agreement and/or (3) Defendant Moses Cone's Offer to treat Plaintiff as an in-network provider for members of BCBSNC, which was

accepted by Plaintiff and which was limited to a co-payment of \$150.00. Thus the lien notice contained misstatements regarding the amount owed by Plaintiff for the medical care and services provided to Plaintiff on October 18, 2013.

37. Following receipt of the \$1,034.00 payment for the lien claim which was delivered to Defendants on or about April 8, 2014 to be held in trust for Plaintiff, Defendants have refused to refund to Plaintiff any portion of the \$1,034.00 received by Defendants despite Defendants' obligations arising under the General Consent, the Offer, and the Services Provider Agreement .
38. As a result of Defendants' actions as set forth herein, Plaintiff has been damaged and Defendants have been correspondingly benefitted.
39. Upon information and belief, Defendants have 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 Moses Cone's medical facilities and who are also members of BCBSNC who Moses Cone agreed to treat in exchange for the in-network benefits described in the applicable Services Provider Agreement and who, as a result, are only obligated to make payment to Moses Cone for co-payments, coinsurance and deductibles, pursuant to the Services Provider Agreement, Moses Cone's unilateral Offer to treat such patients as an in-network provider which was accepted by such patients, and the General Consent, thus causing damage unto said persons and benefiting Defendants.
40. Upon information and belief, Defendants have pursued collection policies and practices which put Defendants' financial interests ahead of the interests of Plaintiff and those of

the members of the Class, in ways that violate Defendants' obligations and duties as the attorney-in-fact for Plaintiff and members of the Class thus causing damage unto said persons and unjustly enriching Defendants.

41. Upon information and belief, Defendant Avectus should have known of and/or is charged with knowledge of the contractual and fiduciary duties of Moses Cone to Plaintiff and, as a result of its agency agreements with Moses Cone, knowingly assumed the duties of its principals.

CLASS ACTION ALLEGATIONS

42. This action is brought by Plaintiff as representative of all others similarly situated under the provisions of Rule 23(a) of the Federal Rules of Civil Procedure for damages and other relief including court costs and attorneys' fees as set forth in more detail below.
43. The "Class" represented by Plaintiff in this action, consists of all persons who received medical treatment at Moses Cone'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 Services Provider Agreement and Moses Cone's Offer to treat such persons as an in-network provider pursuant to such agreements, or 2) did not receive the benefit of collection by Defendants 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 Defendants acting as an attorney-in-fact, or 3) were not refunded amounts received by Defendants in excess of amounts due for medical care and services provided by Moses Cone to said persons, or 4) were sent collection notices by Moses Cone and/or Avectus that contained

misleading statements of fact and misrepresentations regarding their accounts with Moses Cone. Plaintiff reserves the right to amend the definition of the Class as discovery in the case reveals whether the Class should be so amended including the addition of appropriate subclasses.

44. Excluded from the class are Defendants, any entity in which any Defendants have controlling interest, any employees, officers or directors of the Defendants, the legal representatives, heirs, successors, and assigns of Defendants, any judge or employee of the Court assigned to work on this lawsuit, and Plaintiff's attorneys and staff.
45. Common issues of law and fact predominate with respect to the issues raised herein. Common issues of law and fact include: a) the terms of the Services Provider Agreement including the agreed upon payment sources, rates and fees set forth in the Services Provider Agreement, b) the policy and practice of Defendants in seeking collection from other payment sources and of amounts in excess of the agreed upon rates and fees, c) the policy and practice of Defendants in seeking collection as an attorney-in-fact from sources more favorable to Moses Cone but less favorable to Plaintiff and the Class, d) the policy and practice of Defendants 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 Services Provider Agreement, e) the extent to which Defendants have violated the North Carolina Fair Debt Collection Act, f) applicability and application of the North Carolina Unfair and Deceptive Trade Practices Act, g) the appropriateness of punitive damages including the appropriate amount of such damages, and h) whether Defendants' actions violated 29 U.S.C. § 1132(a)(3).

46. The claims of the representative Plaintiff are typical of the claims of the members of the Class. The claims of all members of the Class, including the Plaintiff, depend on the showing that the acts and omissions of the Defendants give 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 Defendants. 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.
47. 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.
48. Plaintiff is represented by experienced and able counsel who has expertise in the areas of tort law, trial practice, and class action representation.
49. 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.

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

50. Plaintiff incorporates by reference the allegations set forth above.
51. Plaintiff and members of the Class are members of BCBSNC.
52. Upon information and belief, at all times relevant, BCBSNC and Moses Cone Defendants were parties to an agreement identified herein as a Services Provider Agreement.
53. Plaintiff and members of the Class are intended third-party beneficiaries of the Services Provider Agreement.

54. Defendants Moses Cone did breach the terms of the Services Provider Agreement proximately causing damage unto Plaintiff and members of the Class by charging and collecting amounts for medical care and treatment that exceed the rates and fees established by the Services Provider Agreement.

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

55. Plaintiff incorporates by reference the allegations set forth above.
56. Pursuant to the terms of the General Consent, Moses Cone agreed to seek collection of benefits from any responsible third-party such as BCBSNC for the cost of medical care provided to Plaintiff and members of the Class and to not seek collection from Plaintiff and members of the Class.
57. Pursuant to the terms of the General Consent, Moses Cone agreed to refund to Plaintiff and members of the Class any amounts received by Moses Cone in excess of amounts owed by Plaintiff and members of the Class.
58. On or about April 8, 2014, Plaintiff's representative paid Defendant Moses Cone pursuant to a statutory lien claim an amount of \$1,034.00 to be held in trust for Plaintiff which exceeds the amount Moses Cone is entitled to pursuant to the General Consent.
59. Moses Cone has refused to refund any portion of the amounts paid pursuant to statutory lien claim described herein and, therefore, has breached the terms of the General Consent.
60. As a result of Defendants' actions as set forth herein, Plaintiff has been damaged and Defendants have been correspondingly benefitted.
61. Moses Cone breached the terms of the General Consent in such a manner as to constitute a breach of contract by demanding and collecting for the costs of Plaintiff's medical care directly from the Plaintiff and by failing to refund to Plaintiff amounts paid in excess of

the agreed upon costs of Plaintiff's medical care pursuant to the terms of the General Consent.

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

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

63. Plaintiff incorporates by reference the allegations set forth above.
64. At all times relevant, Moses Cone offered to provide treatment to Plaintiff and members of the Class as an in-network provider of BCBSNC and in accordance with the terms of Moses Cone's contracts with BCBSNC including specifically the Services Provider Agreement.
65. Plaintiff and members of the Class accepted Moses Cone's Offer for treatment at Moses Cone as an in-network provider.
66. As a result of Moses Cone's representations as an in-network provider for BCBSNC and its offer to treat as an in-network provider, Plaintiff and members of the Class are entitled to treatment pursuant to the terms of the Services Provider Agreement.
67. Moses Cone has breached its contract with Plaintiff and members of the Moses Cone Class by failing to treat Plaintiff and members of the Class as an in-network provider and in accordance with the Services Provider Agreement as more fully described herein.
68. As a direct and proximate result of Moses Cone's breach of contract, Plaintiff and members of the Class have incurred damages as more fully set forth herein.

FOURTH CLAIM FOR RELIEF - UNFAIR AND DECEPTIVE TRADE PRACTICES

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

70. The collection 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.
71. Moses Cone’s conduct as described herein constitutes unfair and deceptive trade practices in that Moses Cone:
- a. By and through its agent Avectus, communicated false information to Plaintiff and members of the Class regarding the amount of charges owed for medical care and services provided by Moses Cone; 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 Services Provider Agreement and further failed to refund amounts received in excess of the amounts allowed pursuant to the Services Provider Agreement as required pursuant to the General Consent.
72. As a direct and proximate result of Moses Cone’s unfair and deceptive trade practices, Plaintiff, and members of the Class, have suffered monetary damages as described above 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 AND SIXTH CLAIMS FOR RELIEF –
BREACH OF FIDUCIARY DUTY AND CONSTRUCTIVE FRAUD**

73. Plaintiff incorporates by reference the allegations set forth above.
74. As a result of the relationship between Moses Cone and Plaintiff, and members of the Class, including Moses Cone’s role as an attorney-in-fact, Defendant Moses Cone owes Plaintiff and the members of the Class fiduciary duties.

75. Defendant Avectus knew or should have known of the fiduciary duties of Moses Cone and agreed to act as agent of Moses Cone. Defendant Avectus undertook performance of these collection duties as agent of Moses Cone thereby knowingly assuming an obligation of proper performance of such duties of its principals.
76. Among the fiduciary duties owed by Defendants to Plaintiff and members of the Class is the duty to act on Plaintiff's behalf and in Plaintiff's best interests in seeking payment from available sources for medical services provided to Plaintiff and members of the Class.
77. Defendants 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 Moses Cone, 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 Services Provider Agreement, failing to refund amounts received in excess of the amounts allowed pursuant to the Services Provider Agreement, pursuing collection policies and practices which put Defendants' 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 source more favorable to Moses Cone but less favorable to Plaintiff than otherwise were available.
78. Defendants did breach its fiduciary duties owed to Plaintiff and members of the Class in a manner that sought to benefit Defendants and did in fact benefit Defendants.

79. Defendants' 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.

**SEVENTH CLAIM FOR RELIEF – VIOLATION OF
NORTH CAROLINA DEBT COLLECTION STATUTE**

80. Plaintiff incorporates by reference the allegations set forth above.
81. Plaintiff and members of the Class are consumers pursuant to N.C.G.S. § 75.50(1).
82. Moses Cone and Avectus are debt collectors within the meaning of N.C.G.S. § 75.50(3).
83. Defendants' 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.
84. Defendants 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 Moses Cone.
85. Defendants did violate Chapter 75, Article 2, specifically N.C.G.S. § 75-54(4), by sending bills to Plaintiff in violation of N.C.G.S. § 131E-91(c).
86. As a direct and proximate result of Defendants' violation of Article 2, Chapter 75 of the North Carolina General Statutes, Plaintiff, and members of the Class, have suffered damages as described above and herein and are entitled to 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 Defendants.

EIGHTH CLAIM FOR RELIEF – CONVERSION

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

88. Defendants have in their possession or have converted to their use funds due, owing and belonging to Plaintiff and members of the Class.
89. 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.
90. As a direct and proximate result of Defendants' conversion of funds due, owing and belonging to Plaintiff and members of the Class, Plaintiff and the members of the Class have suffered damages as more fully set forth herein.

**NINTH CLAIM FOR RELIEF – VIOLATION OF
NORTH CAROLINA GENERAL STATUTE 131E-91(c)**

91. Plaintiff incorporates by reference the allegations set forth above.
92. Defendants' actions as more fully described herein constitute a violation of N.C.G.S. § 131E-91(c) which provides that a "hospital or ambulatory surgical facility shall not bill insured patients for charges that would have been covered by their insurance had the hospital or ambulatory surgical facility submitted the claim or other information required to process the claim within the allotted time requirements of the insurer."
93. As a direct and proximate result of Defendants' violation of N.C.G.S. § 131E-91(c), Plaintiff, and members of the Class, have suffered damages as described above and herein.

**TENTH CLAIM FOR RELIEF – VIOLATION OF
29 U.S.C. § 1132(a)(3) (ERISA SECTION 502(a)(3))**

94. Plaintiff incorporates by reference the allegations set forth above.
95. The Employment Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq. ("ERISA"), protects the rights of employees' and their beneficiaries to their benefits,

providing an avenue for the recovery of benefits due and to redress breaches of fiduciary duties arising from qualified plans.

96. At all times relevant, Plaintiff was a Member and beneficiary of an employee welfare benefit plan pursuant to 29 U.S.C. 1002(1).
97. Defendants have violated 29 U.S.C. § 1132(a)(3) (ERISA § 502(a)(3)) by acting in one or more of the following ways:
 - a. By violating the terms of the Services Provider Agreement by charging and collecting amounts for medical care and treatment that exceed the rates and fees established by the Services Provider Agreement and other applicable agreements including Plaintiff's employee welfare benefit plan;
 - b. By violating the terms of the General Consent by seeking collection for Plaintiff's medical care directly from Plaintiff and members of the Class;
 - c. By refusing to treat Plaintiff and members of the Class in accordance with Moses Cone's representation that Plaintiff and members of the Class would receive care on an in-network basis thus limiting the financial obligation of Plaintiff and Members of the Class to pay for such care to the payment of co-payments, deductibles and coinsurance.
 - d. By refusing to refund to Plaintiff and members of the Class amounts received in excess of the payment obligations of Plaintiff and members of the Class under the terms of the applicable ERISA qualified plan.
98. As a direct and proximate result of Defendants' acts and omissions as more fully alleged herein and Defendants' violation of 29 U.S.C. § 1132(a)(3), Plaintiff and members of the Class are entitled to equitable relief including but not limited to:

- a. Restitution of all funds obtained by Defendants that belong to Plaintiff and members of the Class;
 - b. An accounting of all funds obtained by Defendants that belong to Plaintiff and members of the Class;
 - c. Disgorgement of all funds, profits and earnings obtained by Defendants as a result of their conduct;
 - d. A constructive trust as to all funds obtained by Defendants that belong to Plaintiff and members of the Class.
99. Plaintiff and members of the Class are also entitled to an award of prejudgment and post-judgment interest, attorneys' fees and costs pursuant to 29 U.S.C. § 1132(g)(1).

**ELEVENTH CLAIM FOR RELIEF –
DECLARATORY JUDGMENT 28 U.S.C. § 2201**

100. Plaintiff incorporates by reference the allegations set forth above.
101. Pursuant to 28 U.S.C. § 2201, Plaintiff seeks a declaration of his rights under the employee benefits plan described above and all terms and benefits provided by such plan to the full extent interpretation or determination of the meaning of the terms of the plan or the benefits provided under the plan is necessary to determine Plaintiff's rights and Defendants' obligations under the terms of the state law contracts and other state law causes of action alleged herein.

TWELTH CLAIM FOR RELIEF - INTERFERENCE WITH CONTRACT

102. Plaintiff incorporates by reference the allegations set forth above.
103. At all times relevant, Plaintiff and members of the Class were parties to contracts with the Moses Cone Defendants, as more fully described above, where such contracts establish

the payment obligations for medical care and services provided to Plaintiffs and members of the Class.

104. The terms of the contracts between the Plaintiff and members of the Class and Defendant Moses Cone provide for treatment to Plaintiff and members of the Class in exchange for payment pursuant to the terms of the contracts described above and limit the payment obligation of the Plaintiff and members of the Class to amounts due as copayments copayments, coinsurance and deductibles.
105. Upon information and belief, Defendant Avectus knew, or should have known, of the existence of the contracts between Plaintiff and members of the Class and Moses Cone.
106. Defendant Avectus, by and through its collection efforts as more fully described above, intentionally induced Defendant Moses Cone to breach said contracts and collect amounts for treatment that exceed the payment obligation of the Plaintiff and the Class members.
107. The acts of Defendant Avectus were without justification and constitute an intentional interference with contract.
108. As a direct and proximate result of Defendant Avectus' intentional inference with contract, Plaintiff and members of the Class, have suffered damages as more fully set forth herein.

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 Federal 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 Defendants;
3. That Plaintiff, and the class Plaintiff represents, have and recover damages of the Defendants pursuant to the claims for relief set out in this Complaint;
4. That Plaintiff, and the class Plaintiff represents, have injunctive relief against Defendants as set forth in the Complaint;
5. That Plaintiff, and the class Plaintiff represents, have and recover prejudgment and post judgment interest at the maximum legal rate;
6. That the Plaintiff, and the class Plaintiff represents, have and recover attorneys' fees as allowed by law;
7. That the Plaintiff, and the class Plaintiff represents, have and recover the costs of this action as allowed by law; and
8. 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 21st day of April, 2016.

/s/ J. Michael Malone
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