

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
No. 4:22-cv-00014-FL

**GEORGE CANSLER, on his own behalf, and
on behalf of a class of those similarly situated,**

Plaintiff,

v.

**UNIVERSITY HEALTH SYSTEMS OF
EASTERN CAROLINA, INC., EAST
CAROLINA HEALTH-CHOWAN, INC.,
and FIRSTPOINT COLLECTION
RESOURCES, INC.,**

Defendants.

**FIRST AMENDED CLASS
ACTION COMPLAINT**

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Plaintiff, George Cansler, through counsel, acting on his own behalf and on behalf of a putative class of those similarly situated, brings this action for breach of contract, unjust enrichment, violations of the North Carolina Unfair and Deceptive Trade Practices Act (“UDTPA”), N.C.G.S. § 75-1 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201(a) *et seq.*, the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, and the North Carolina Collection Agency Act (“NCCAA”), N.C.G.S. § 58-70 *et seq.*, against Defendants University Health Systems of Eastern Carolina, Inc., East Carolina Health-Chowan, Inc. (collectively, “ECU Health”¹), and FirstPoint Collection Resources, Inc. (“FirstPoint”), and states as follows based on personal knowledge, investigation of counsel, and information and belief:

I. NATURE OF THE ACTION

1. This action concerns unfair and deceptive billing and collection practices engaged in by ECU Health and FirstPoint. Defendants grossly overcharged Mr. Cansler without having any enforceable agreement with him to pay ECU Health’s inflated prices. Defendants then utilized aggressive, manipulative, and illegal collection practices in an attempt to coerce him to pay an unreasonable amount to which he had never agreed. Indeed, ECU Health had a policy of not disclosing to patients like Mr. Cansler the prices of ECU Health’s services. This was despite the fact that ECU Health was aware that many patients, like Mr. Cansler, would have to bear the vast majority of that expense after the services were provided. Mr. Cansler’s experience is typical of

¹ Prior filings in this case referred to ECU Health as “Vidant” or “Vidant Health,” because at the time of the filing of the original Complaint, ECF 1, the hospital system operated under this name. In early 2022, Vidant announced that it would be rebranding as ECU Health. *See* Lance Martin, *ECU Health unveils logo as rebranding begins next month*, rrspin.com (Apr. 14, 2022), *available at* <https://www.rrspin.com/news/5795-ecu-health-unveils-logo-as-rebranding-begins-next-month.html>. This First Amended Complaint thus refers to these entities as ECU Health, although at the time of the relevant events, the system was known as Vidant Health.

insured patients who receive care at ECU Health facilities. He therefore sues for damages and declaratory relief both for himself and a class of those similarly situated.

II. THE PARTIES

A. Plaintiff.

2. Plaintiff George Cansler is a resident of Edenton, North Carolina, Chowan County.

B. Defendants.

3. Defendant University Health Systems of Eastern Carolina, Inc., formerly d/b/a Vidant Health and currently d/b/a ECU Health, is a North Carolina nonprofit corporation. Its principal place of business is located at 800 W.H. Smith Boulevard, Greenville, NC 27834, Pitt County. It may be served with process through its registered agent at P.O. Box 6028, Greenville, NC 27835.

4. ECU Health is a not-for-profit, 1,447-bed hospital system that serves more than 1.4 million people in 29 counties in Eastern North Carolina, as well as residents of Virginia. The system is made up of nine hospitals and more than 12,000 employees. Its estimated revenue for the year 2017 was \$1,693,152,000. It is one of the largest health systems in the State. It is sophisticated as an organization and has far greater resources than an individual consumer. “Vidant Health” appears on the bills Mr. Cansler received, because that was the name under which the health system did business. In May 2022, the system changed its brand name to ECU Health. On information and belief, in the past ECU Health has made collection claims in consumer bankruptcies regarding medical bills. On information and belief, ECU Health primarily controlled and directed the billing practices alleged herein.

5. Defendant East Carolina Health-Chowan, Inc., formerly d/b/a Vidant Chowan Hospital (“ECU Health Chowan Hospital”), is a North Carolina nonprofit corporation. Its principal

place of business is located at 800 W.H. Smith Boulevard, Greenville, NC 27834. It may be served with process through its registered agent Michael Waldrum at P.O. Box 6028, Greenville, NC 27835. As described below, the Plaintiff's relevant service occurred at ECU Health Chowan Hospital. It is one of the hospitals that operates under ECU Health's umbrella.

6. Defendant FirstPoint is a North Carolina corporation. Its principal place of business is located at 225 Commerce Pl., Greensboro, NC 27401. It may be served with process through its registered agent Anthony Robertson at 225 Commerce Pl., Greensboro, NC 27401. It holds a collection agency license under N.C.G.S. § 58-70-1 and is a "debt collector" under the FDCPA, 15 U.S.C. § 1692a(6) and a "collection agency" under N.C.G.S. §§ 58-70-15 and 58-70-90(1).

III. JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over Plaintiff's federal claim under the FDCPA pursuant to 28 U.S.C. § 1331, because the claim arises under federal law. The Court has supplemental jurisdiction over any state law claims pursuant to 28 U.S.C. § 1367, because they arise out of the same transactions or occurrences.

8. In addition, the Class Action Fairness Act, or CAFA, 28 U.S.C. § 1332(d), establishes subject matter jurisdiction, in that the putative class meets CAFA jurisdictional requirements of minimal diversity, because on information and belief some class members live in Virginia; there are 100 or more putative class members, and more than \$5 million in controversy.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c) and 18 U.S.C. § 1965, because ECU Health transacts business in, is found in, or has agents in this judicial district, and because some of the actions giving rise to this complaint took place within this district.

10. The Court has personal jurisdiction over the Defendants.

IV. FACTUAL BACKGROUND

11. ECU Health and FirstPoint have operated a system that saddles patients with astonishingly high medical bills. ECU Health knows that the prices it charges patients for medical services are unreasonably high. Indeed, when patients ask ECU Health representatives about the cost of care before they receive a service, ECU Health has had a policy of refusing to tell patients the price it plans to charge. Thus, ECU Health made it impossible for patients to make an informed financial decision about their care, and patients could not—and did not—willingly consent to pay ECU Health’s unreasonable, undisclosed prices.

12. After patients received care, ECU Health compounded the financial harm patients suffered by harassing them to pay these excessive fees, including by sending their bills to FirstPoint and implicitly threatening their credit score.

13. In this way, and as described more fully below, Defendants have used and continue to use an unfair, deceptive scheme designed to extract undisclosed and unreasonably high prices from patients.

A. How Prices of Medical Services Are Set for Patients with Commercial Insurance.

14. With respect to patients with commercial insurance (as opposed to government insurance such as Medicare or Medicaid), the market for hospital services is different to other markets because the person consuming the hospital services, the patient, does not negotiate—and in many cases, such as here, cannot even know beforehand—the costs of the medical services they are consuming.

15. Instead, commercial health plans, such as Blue Cross Blue Shield of North Carolina (“Blue Cross”), purchase medical services for the benefit of their insured members, the consumers.

Commercial health plans negotiate with hospitals for the price the plans will pay for medical services, known as the “allowed amount,” before services are consumed by members.

16. Commercial health plans do not negotiate with hospitals on a service-by-service basis; rather, they negotiate with hospitals for bundles of services that the health plan will offer to members as “in-network” benefits. If the health plan and hospital reach a deal for a bundle of services (for instance, all acute inpatient hospital services), the hospital will be considered in-network for every service in that bundle. This means that for any service in that bundle, if a commercial health plan’s member receives that service from the hospital, the health plan will pay the hospital some share of the allowed amount those two parties negotiated for that service.

17. Under most commercial health plans, the patient will then be responsible for paying the share of the allowed amount that the insurance company did not pay. For insured patients with so-called “high deductible” plans, such as Mr. Cansler, the patient bears responsibility for paying the vast majority of the allowed amount for a particular procedure (*e.g.*, 80%), until the deductible is met. Thus, for the first several thousand dollars of medical treatment a patient receives each year, the patient pays a significant majority of that cost.

18. Because of the ever-rising costs of health care, many group and individual private insurance plans have high deductibles or other mechanisms that place a significant payment obligation on the consumer.

19. Healthcare consumers are in a unique posture to be exploited by a revenue-minded hospital system because they generally do not know nor consent to the costs prior to the service. Rather, they reasonably assume that the hospital system will have the integrity to use reasonable prices.

20. Consumers are unaware that their treating doctors, as well, generally have no knowledge of the prices being charged by the hospitals for their services nor do they have any control over what those prices should be. Rather, such functions are carried out by an entirely separate billing and administrative component of the system.

21. Each hospital keeps its own “chargemaster,” a list of all of the hospital’s billable items and the corresponding charges. These charges are set by the hospital and are not the reasonable amounts consumers would expect to be charged.

22. Patients are in general not privy to the allowed amounts their insurer has negotiated with hospitals for various services. These bundled prices are a function of the artificial chargemaster prices and are not disclosed to patients. At no point do patients agree to specific prices for specific procedures. Thus, despite the fact that the patient is the one consuming the services and will often bear a significant amount of the financial responsibility for the services they consume, a patient like Mr. Cansler does not know before they consume a service how much it will cost them. Compounding matters, at all times relevant to this litigation, ECU Health followed a corporate policy of not disclosing the allowed amount of its services to patients even if they asked.

23. In the absence of an agreement between the patient and the hospital as to a particular service’s price, the hospital is not entitled to the full chargemaster for that service, because the chargemaster is much higher than the reasonable cost of the service.

24. The chargemaster has been described as the “central mechanism for the revenue cycle” of hospitals, but its defining feature is that it is “devoid of any calculation related to cost” and is not based on market transactions. Rather, it is set in order to maximize a hospital’s profits and increase leverage in bargaining with insurers and patients. Thus, charging a patient a

chargemaster or some “discounted” share (*e.g.*, 80%) of the chargemaster is not a reasonable price.

25. One measure of the reasonable price for a service is the rate that Medicare pays, because Medicare ties the prices it pays for a given service to the cost of providing that service plus a small profit margin. For most services, the chargemaster price for a service is many times higher than what a hospital would receive for that service from Medicare.

26. For example, the 2018 Medicare rate for the CT scan that Mr. Cansler received (discussed in more detail below) was \$302.60. However, ECU Health’s chargemaster for that same service was \$4,000, more than 13 times higher. And the allowed amount for that CT scan under Mr. Cansler’s plan was \$3,576, more than 11 times the Medicare rate.

27. This huge disparity between the Medicare rate and the price ECU Health charges individuals like Mr. Cansler is not limited to CT scans. For many other common procedures, ECU Health charges patients more than 10 times the rate that Medicare would pay for that identical service.

28. ECU Health patients never assent to health care providers’ chargemasters, nor would they if they had a meaningful choice.

29. Neither ECU Health’s chargemasters nor the allowed amounts they negotiate with commercial health plans are reasonable rates for the relevant services.

30. Under North Carolina law, where there is no contract specifying the rate to be charged for treatment, a hospital is entitled only to the reasonable value of the service it provides.

B. Background on ECU Health, its Unreasonable Prices, and its Refusal to Disclose Prices.

31. University Health Systems of Eastern Carolina, Inc. was created in 1997. In 2011, it changed its “doing business as” name to Vidant Health. In early 2022, the system announced it was changing its branded name again, now to ECU Health.

32. ECU Health controls and operates nine hospitals in Eastern North Carolina, including ECU Health Chowan Hospital. Each hospital is its own corporation, with ECU Health’s CEO, Michael Waldrum, acting as the registered agent for all of them.

33. The ECU Health system is centrally controlled and ECU Health issues corporate policies addressing financial management that each of the hospital corporations is expected to follow.

34. Each of the ECU Health hospitals keeps its own chargemaster. Each of the ECU Health hospitals’ chargemaster and allowed amount rates for CT scans grossly exceed any reasonable value of the service. ECU Health hospitals charge similarly inflated chargemasters and allowed amounts for many other common procedures and services.

35. Medicare reimbursement prices are often used as benchmarks, representing a fair amount for the procedure.

36. The Medicare reimbursement price for a CT scan, abdominal and pelvis, CPT code 74176, in North Carolina in 2018 was \$302.60 and in 2021 was \$315.

37. During the pertinent times, ECU Health hospitals charged patients well in excess of that price for the same CT scan procedure. The 2021 chargemaster prices were:

- ECU Health Chowan Hospital: \$4,000,
- ECU Health Medical Center: \$4,996,
- ECU Health Edgecombe Hospital: \$4,720,
- The Outer Banks Hospital: \$4,200,
- ECU Health Duplin Hospital: \$3,785,

- ECU Health North Hospital: \$2,713.20,
- ECU Health Beaufort Hospital: \$2,533,
- ECU Health Bertie Hospital: \$1,785, and
- ECU Health Roanoke Hospital: \$1,727.

38. ECU Health's business practices have sought to harass patients into paying its excessive prices. During the pertinent times, ECU Health set unreasonable prices, deliberately did not disclose its prices to patients like Mr. Cansler prior to treatment, sought to bill the patients for the excessive prices after the fact and, when patients were unable or unwilling to pay the inflated prices, sought to coerce them into payment by threatening their credit score and engaging in collection efforts.

39. As of 2018, ECU Health refused to disclose its costs to patients prior to treatment, even if they asked. ECU Health claimed that the Emergency Medical Treatment and Labor Act ("EMTALA"), 42 U.S.C. § 1395dd, prohibited it from informing patients of the costs of care, and, while knowing that patients would not be disclosed the costs until after the care, set egregiously high costs for the care.

40. EMTALA has never prohibited hospitals from disclosing chargemasters or allowed amounts to patients. EMTALA requires that hospital emergency departments provide a medical screening examination to any person who comes to the emergency department and requests an examination. EMTALA prevents the hospital from refusing to examine or treat a patient based on their insurance status, ability to pay, national origin, race, creed, or color.

41. ECU Health now provides a cost estimator on its website, which demonstrates that ECU Health does not believe cost disclosure prior to treatment is a violation of EMTALA. On information and belief, the cost estimator was not available prior to 2021.

42. On information and belief, ECU Health created the cost estimator to comply with 45 C.F.R. § 180.40, which required hospitals to disclose such prices as of January 1, 2021. There

has been no substantive change to EMTALA that would alter what ECU Health is or is not permitted to disclose with respect to the prices of services.

43. In justifying its policy of refusing to disclose prices in advance, ECU Health by letter dated December 12, 2019 to Mr. Cansler claimed that “[i]n addition to being a violation of federal law,” “[t]he discussion of healthcare pricing or costs with patients can deter patients and their families from seeking assistance that they may desperately need.” Since 2019, there has been no substantive change to patient motivations that would alter what ECU Health can disclose to patients about the prices of its services. And yet, ECU Health now makes some of this information available on its website, belying its EMTALA contentions that somehow that statute ties its hands.

44. On information and belief, ECU Health’s compliance with 45 C.F.R. § 180.40—*i.e.*, making more transparent its prices and negotiated rates—has not affected the level of medical service ECH Health provides.

C. Background on Defendants’ Unlawful Means of Attempting to Collect Debts.

45. ECU Health coerces patients into paying their excessive prices by threatening to send them to collections, report them to credit reporting agencies, damaging their credit scores, and imposition of interest and legal fees on top of a billed amount that is unreasonable and based on a contract that is unenforceable for lack of a price term or contains an open price term.

46. ECU Health sends repeated bills to patients stating short payment deadlines.

47. If a patient does not pay ECU Health’s exorbitant rates on their timeline, they are sent “Final Notices” threatening to refer the account to collections and/or credit reporting agencies with even shorter ten-day deadlines.

48. The “Final Notices” can arrive after the supposed deadline due to mail delays for ECU Health’s primarily rural customer base.

49. ECU Health then refers the bills to its debt collector, FirstPoint, which threatens to send the debt for listing on the patient's credit report. In its initial collection letter, FirstPoint recites that it may report the debt to credit reporting agencies.

50. FirstPoint is regularly engaged in the collection of debts from consumers using the means and instrumentalities of interstate commerce, including but not limited to, the United States mail and interstate telephone communications.

51. While not a licensed debt collector itself, ECU Health through its billing office aided and abetted FirstPoint in its debt collection activities and the ECU Health and FirstPoint entities engaged in concerted action, for example when ECU Health would "recall" the debt from FirstPoint only to later send another "Final Notice" then transmit the file back to FirstPoint.

D. Facts Regarding Plaintiff and his Experience with Defendants' Unlawful Conduct

52. Mr. Cansler has a Master's Degree in Accounting, and works in managerial capacity at a private company. As an accountant, he is used to strict ethical and legal compliance in economic transactions.

53. At all times relevant to this lawsuit, Mr. Cansler paid for private group health insurance from Blue Cross.

54. At all times relevant to this lawsuit, Mr. Cansler had a "Blue Options" plan.

55. Under the Blue Options plan, ECU Health Chowan Hospital was an "in-network hospital," meaning that Blue Cross and ECU Health had negotiated allowed amounts, or discounts, for most procedures Blue Cross's insured patients were likely to receive. Subscribers of Blue Options therefore are encouraged to seek care at ECU Health Chowan Hospital.

56. Blue Cross negotiates rates that it pays ECU Health Chowan Hospital that are lower than ECU Health's chargemaster (i.e., discounts from the chargemaster). However, for many

plans, including Mr. Cansler's Blue Options plan, the allowed amounts remain unreasonably high, for many services in excess of 10 times the Medicare rate for those procedures. ECU Health Chowan Hospital sets its chargemaster amounts such that even after the discount subscribers like Mr. Cansler are obligated to pay amounts that are unreasonably high.

E. Mr. Cansler Receives Care from ECU Health Chowan Hospital.

57. On or about June 6, 2018, Mr. Cansler visited the ECU Health Chowan Hospital emergency room due to pain secondary to what he felt was a likely kidney stone (he subsequently passed the stone). Mr. Cansler had experienced kidney stones before, so he was highly confident that the pain he felt was due to a kidney stone.

58. Mr. Cansler has excellent credit and is not accustomed to having himself or his family on the receiving end of collection efforts.

59. Mr. Cansler went to ECU Health Chowan Hospital's emergency room because there were no urgent care facilities proximate to his home, and ECU Health Chowan Hospital did not have another mechanism for admitting patients with non-emergency but still time-sensitive medical issues, such as having a kidney stone. Mr. Cansler understood that his condition was not an emergency, and he would not have visited the emergency room if he had any other option for receiving medical care.

60. Upon arriving at ECU Health Chowan Hospital, Mr. Cansler paid \$100.

61. During his visit, he received, among other services for which there were charges, a CT scan.

62. Mr. Cansler's medical records reflect the existence of a form titled "Authorization & Consent for Treatment and Assignment of Benefits" signed by him on June 6, 2018, containing these representations among others:

- a. “I hereby agree to pay all charges of Facility that are not covered or paid within a reasonable time by any medical insurance/coverage, whether or not I am otherwise legally obligated to pay.”
- b. “I understand that I am financially responsible to the Hospital and physicians for charges not paid by insurance. If an unpaid balance is sent to a collection agency, I will be responsible for any legal fees and/or interest associated with collection of debt.”

63. The term “charges” is not defined and the form does not contain any other price term. Under those circumstances, patients have not agreed to pay the inflated chargemaster or allowed amounts. Patients owe only the reasonable cost for that service.

64. Had Mr. Cansler known that ECU Health would seek to hold him personally financially responsible for thousands of dollars for a CT scan, he would have elected not to receive the service at ECU Health on June 6, 2018. This would have been a medically appropriate decision.

F. Mr. Cansler receives bills with unreasonable prices to which he did not assent

65. On or about June 19, 2018, Blue Cross sent Mr. Cansler an Explanation of Benefits (“EOB”) statement. The EOB listed a total billed amount of \$6,251.70.

66. According to the EOB, Mr. Cansler received member savings of \$662.68. Blue Cross paid \$1,326.11. The EOB noted that the amount the provider may bill Mr. Cansler was the remaining \$4,262.91, consisting of co-insurance of \$884.08 and \$3,378.83 within Mr. Cansler’s deductible. The provider billed \$4,000 for unspecified services.

67. Mr. Cansler was shocked and surprised to receive a bill for over \$3,000 for a short visit to an in-network hospital.

68. Mr. Cansler did not receive an itemized bill until September 2019, more than a year later and after he raised concerns. That itemized bill detailed that the \$4,000 charge was for “HB-CT ABDOMEN AND PELVIS W/O CONTRAST.” The bill listed the allowed amount for this

procedure as \$3,576 with Blue Cross paying \$456.61 of that amount. This left \$3,119.39 which ECU Health claimed Mr. Cansler was required to pay for that CT scan.

69. Before receiving that itemized bill in September 2019, ECU Health sent Mr. Cansler several other bills claiming that he owed thousands of dollars.

70. On or about June 22, 2018, ECU Health sent Mr. Cansler an initial bill for \$4,162.91, noting that Mr. Cansler had paid \$100 toward the total. The bill stated that payment was due July 12, 2018.

71. On or about July 22, 2018, ECU Health sent Mr. Cansler a second bill for \$4,162.91. The bill stated that payment was due August 11, 2018.

72. On or about August 22, 2018, ECU Health sent Mr. Cansler a third bill for \$4,162.91. The bill stated that payment was due September 11, 2018.

73. Mr. Cansler made three \$50 payments to keep his account in good standing between August and October 2018. While he disputed the amount owed, and the price for a CT scan struck him as outrageous, he was not a medical billing expert and was looking into the issue.

74. On or about September 27, 2018, Mr. Cansler wrote a letter to ECU Health's central billing office disputing the charges and requesting further information.

75. ECU Health placed Mr. Cansler's bill under review, claiming that they would reach out to him when the review was completed.

76. On April 7, 2019, ECU Health apparently applied an additional \$75.41 in payment to the bill in error. Payment was from Plaintiff for a different medical event and was mis-applied to the wrong invoice. Accordingly, the total amount Plaintiff is believed to have paid toward the CT scan was \$325.41 (\$100 plus \$150 plus \$75.41).

77. On or about July 26, 2019, more than a year after he received care, ECU Health adjusted Mr. Cansler's bill down by \$184. While this bill was sent at some point to Mr. Cansler's insurer, Blue Cross, Mr. Cansler only learned about the reduction and the reasoning behind it when he reached out to the President of ECU Health Chowan Hospital, Brian Harvill.

78. As a result of the reduction in Mr. Cansler's amount owed, Blue Cross adjusted the amount it paid down as well. Blue Cross sent Mr. Cansler a revised EOB on or about December 4, 2018, adjusting the amount it covered from \$1,326.11 to \$1,227.42. The EOB showed that ECU Health billed \$4,000 for what we now know was the CT scan; the allowed amount for the CT scan was \$3,576.00; and "BCBSNC Paid" "\$456.61."

79. On or about July 29, 2019, ECU Health sent Mr. Cansler a "Final Notice." ECU Health did so without contacting Mr. Cansler to communicate that the review was complete. ECU Health now claimed Mr. Cansler owed \$3,871.70.

80. The Final Notice stated that "This is your FINAL NOTICE. Your account may be referred to an outside collection/credit reporting agency if full payment or satisfactory arrangements are not made within 10 days of the date of this letter."

81. Mr. Cansler did not receive the Final Notice until on or about August 14, 2019, already outside the ten-day window listed in the letter.

82. Eight of the nine ECU Health hospitals service rural areas and ECU Health is or should be aware that mail deliveries are slower in rural areas, potentially taking more than the ten-day window.

83. For Mr. Cansler, who had bill processing and bookkeeping responsibilities as part of his own career, it was shocking and surprising to be receiving a "FINAL NOTICE" from a large and well-known hospital system for an inflated, unreasonable charge he had never agreed to.

84. During an extensive back and forth with Mr. Cansler, ECU Health Chowan Hospital President Harvill blamed Mr. Cansler's high deductible plan for "pushing a lot of this invoice to you personally." Harvill told Mr. Cansler that 80% of patients at ECU Health Chowan Hospital are non-paying patients and, as a result, the other 20% must pay the hospital to cover the 80% who cannot pay. ECU Health has publicly referred to this additional cost as a "hidden tax" that non-Medicaid or Medicare patients must pay without the knowledge that they are overpaying for services.

85. ECU Health eventually offered to apply a downward administrative adjustment of \$873 to Mr. Cansler's bill, which Harvill described as a "cash payer discount." This adjustment occurred only after Mr. Cansler pointed out multiple billing discrepancies and the wide variation in chargemaster prices across ECU Health hospitals, with ECU Health Chowan Hospital charging \$4,000 for the same procedure for which ECU Health Roanoke Hospital charges \$1,727. Even the significantly lower ECU Health Roanoke charge was more than five times the Medicare price for the same service.

86. Following the administrative adjustment, ECU Health claimed that Mr. Cansler still owed \$2,998.70.

87. On August 15, 2019, Plaintiff visited the business office at ECU Health where Jennifer (Business Office Manager) informed him that the review done by staff at the hospital had concluded the charges were correct. She said they had recently installed a new billing system and the Final Notice notification was sent in error as the bill had only recently come out of review. She said the account should not have gone to "threat of collection" status that quickly and apologized for the error. She then asked if he wanted to set up a payment plan. Mr. Cansler shared with Jennifer the Healthcare Blue Book (www.healthcarebluebook.com) documentation of a fair

price for a CT scan. Jennifer responded to the effect that ECU Health was a private hospital and, essentially, that they could charge any price they wanted to for services.

88. Mr. Cansler attempted to continue to negotiate with ECU Health but was repeatedly rebuffed. ECU Health's Risk Management Senior Administrator, Jamie Grady, claimed in a letter dated December 12, 2019, that EMTALA prevented ECU Health from providing any cost information to patients prior to treatment.

89. On or about December 21, 2019, Mr. Cansler wrote a letter to Ms. Grady asking for an explanation of her claim that EMTALA prevented ECU Health from providing patients with cost information prior to treatment.

90. On or about January 3, 2020, ECU Health sent Mr. Cansler another Final Notice stating that "This is your FINAL NOTICE. Your account may be referred to an outside collection/credit reporting agency if full payment or satisfactory arrangements are not made within 10 days of the date of this letter."

91. On or about January 23, 2020, Ms. Grady repeated her claim that EMTALA prevented ECU Health from providing cost information to its patients prior to treatment. She stated that Mr. Cansler's account would be put on hold for 30 days so he could arrange payment.

92. Mr. Cansler responded to Ms. Grady's letter on or about February 15, 2020, challenging the justifications offered in her letter.

93. On or about October 7, 2020, Mr. Cansler wrote another letter to Ms. Grady because he had not received any response.

94. On or about October 13, 2020, Mr. Cansler received a call from FirstPoint attempting to collect on the \$2,998.70 debt ECU Health had referred to it.

95. On or about October 17, 2020, Mr. Cansler received a letter from FirstPoint advising him that his debt had been turned over to them for collection.

96. For Mr. Cansler, who had good credit, and who with his accounting background prided himself on being financially prudent, receiving this debt collection notice from FirstPoint was surprising and shocking.

97. On or about October 17, 2020, Mr. Cansler responded to the letter from FirstPoint, advising that the debt was disputed. He asked that any future communications be in writing and that FirstPoint not call again.

98. On or about November 11, 2020, FirstPoint responded to Mr. Cansler's October 17, 2020 letter by stating that they had verified the debt with ECU Health.

99. On or about November 18, 2020, Ms. Grady responded to Mr. Cansler's February 15 and October 7, 2020 letters stating that while ECU Health was "under no obligation to pull [his] account from collection," she would be recalling the account from FirstPoint for 30 days "as a public relations gesture."

100. On or about December 16, 2020, FirstPoint sent Mr. Cansler a letter informing him that ECU Health had recalled his account from collections.

101. On or about January 15, 2021, ECU Health sent Mr. Cansler a bill for \$2,998.70. The bill stated that payment was due on February 4, 2021.

102. On or about February 19, 2021, Mr. Cansler received a voicemail from FirstPoint on his work phone attempting to collect on the debt.

103. On or about February 20, 2021, Mr. Cansler again wrote FirstPoint a letter disputing the debt.

104. On or about May 26, 2021, against Mr. Cansler's written instructions, Mr. Cansler's wife received a call from FirstPoint attempting to collect the debt.

105. Unfortunately for residents of Eastern North Carolina, Mr. Cansler's experience is typical of patients who receive care from ECU Health. Moreover, because ECU Health is the region's dominant hospital system, most residents of Eastern North Carolina have no choice but to submit to its unreasonable charges and aggressive collection efforts.

G. Additional Facts.

106. ECU Health's chargemaster price for CT scan Cansler received, at \$4,000, was unreasonably high. The partially discounted price of nearly \$3,000 that ECU Health sought to collect from the Plaintiff remained unreasonably high.

107. Blue Cross has not sought to engage in debt collection activities against Mr. Cansler. Only ECU Health has done that.

108. The admission agreement signed by Mr. Cansler is devoid of any reference to "regular rates" or to the hospital's chargemaster price list.

109. ECU Health's chargemaster price list does not list regular rates. Rather, the rates listed in the chargemaster are highly irregular compared to rates that are actually paid.

110. The chargemaster rates are set artificially high as a starting point for negotiations with Blue Cross and other insurers and plans. Neither ECU Health nor Blue Cross contemplates that the chargemaster rates will actually be paid. Chargemaster rates are not regular rates and do not reflect what is paid or what ECU Health expects will be paid.

111. Moreover, because the consent form Mr. Cansler signed merely stated that he would owe ECU Health "all charges," even if he had been provided the chargemaster he would

not have known that by agreeing to pay “all charges” ECU would charge he was agreeing to pay the chargemaster or any rate tied to the chargemaster.

112. It does not violate EMTALA for ECU Health to offer a price estimator tool on the hospital system website, which includes price estimates for services like a CT scan that are offered in an emergency department.

113. If a patient waiting in the waiting room of the ECU Health Chowan Hospital today, who had a non-life-threatening issue, sought (e.g., on her smartphone or portable tablet computer) to use the ECU Health price estimator internet tool to understand the cost of her care in the emergency department, such would not violate EMTALA. Nor would it violate EMTALA for an ECU Health employee to assist a patient in that regard.

114. Disclosing prices, as ECU Health now does via its price estimator tool, allows patients to make more informed treatment decisions, but it does not meaningfully affect the level of service offered by ECU Health or ECU Health Chowan Hospital.

115. According to the Healthcare Bluebook² estimator tool, a widely used estimator of fair prices for services by hospital, as of August 2019, fair prices for CT scans included \$472 for abdomen and pelvis CT scan, no contrast, and \$278 for abdominal CT scan, no contrast.

116. The North Carolina State Treasurer has indicated that for privately insured outpatient services generally, of which an outpatient CT scan would be one, a price of 225% of the Medicare price would be fair and reasonable.

117. In 2018, the amount Medicare paid for a similar CT scan at ECU Health Chowan Hospital was \$302. Using the 225% calculation, a reasonable price would be \$679.

118. ECU Health through FirstPoint has demanded that Cansler pay \$2,998.70.

² <https://www.healthcarebluebook.com/ui/home>

119. Mr. Cansler has paid \$325 to date and Blue Cross has paid \$456 to date. Mr. Cansler's and Blue Cross's payments to ECU Health in the aggregate total \$781.

120. ECU Health, by being paid \$781 for the CT scan, has been paid a monetary amount which is \$309 in excess of a reasonable rate as measured by the Healthcare Bluebook rate of \$472, and which is \$102 in excess of a reasonable rate as measured by 225% of the Medicare price.

121. ECU Health has been overpaid on the CT scan provided to Mr. Cansler.

122. The specific type of CT scan Mr. Cansler received was an abdominal/pelvic scan, without contrast. This procedure has a specific CPT code associated with it. The CPT code reflects uniformity in how the procedure is handled as a billed item. On ECU Health's current price calculator tool available on its website,³ the particular category of CT scan that Mr. Cansler received is identified as one of ECU Health's most common procedures. The image below is from the website:

³ <https://mychart.vidanthealth.com/mychart/GuestEstimates>.

What service would you like?

Search by keyword or CPT® code

Categories ★ Common Services

12 results for category "Common Services"

<p>SAVH Cataract Without Stent ★</p> <p>CPT® 66984</p> <p>XCAPSL CTRC RMVL INSJ IO LENS PROSTH W/O ECP</p>	<p>SAVH Cesarean Delivery (C-Section) ★</p>
<p>SAVH Colonoscopy Diagnostic ★</p> <p>CPT® 45378</p> <p>COLONOSCOPY FLX DX W/COLLJ SPEC WHEN PFRMD</p>	<p>SAVH CT Abdomen and Pelvis With Contrast ★</p> <p>CPT® 74177</p>
<p>SAVH CT Abdomen and Pelvis Without and With Contrast ★</p> <p>CPT® 74178</p>	<p>SAVH CT Abdomen and Pelvis Without Contrast ★</p> <p>CPT® 74176</p>

123. As can be seen, one of ECU Health’s “common services” consists of the service known as “SAVH CT Abdomen and Pelvis Without Contrast.” Its associated CPT Code is 74176. It is believed to have been the procedure provided to Mr. Cansler.

124. ECU Health’s chargemaster and the discounted rates tied to the chargemaster for all CT scans at ECU Health Chowan Hospital are similarly unreasonable.

V. CLASS ALLEGATIONS

125. Plaintiff seeks to represent a class defined as follows:

- a. ECU Health class: All individuals who: visited the ECU Health Chowan Hospital facility emergency department within the last four years; signed (personally or through an authorized agent) the “Authorization & Consent for Treatment and Assignment of Benefits” or a similar form; received a CT scan; and were thereafter billed personally for ECU Health’s chargemaster or negotiated rates;
- b. FirstPoint subclass: All members of the ECU Health class who were subjected to debt collection efforts within the last year, including receiving

one or more collection letters from FirstPoint regarding their ECU Health bill.

126. Under Rule 23(a)(1), the class is so numerous that joinder of all members is impracticable. ECU Health facilities including ECU Health Chowan Hospital have provided individuals within the class definition thousands of services within the last four years. CT scans are one of the system's more commonly used services.

127. Under Rule 23(a)(2), questions of law or fact common to the class include:

- a. Did Defendant engage in unfair and deceptive billing and collection practices?
- b. Does the "Authorization & Consent for Treatment and Assignment of Benefits" form contain an open price term, such that under contract law or the doctrine of *quantum meruit* only a reasonable price is owed to ECU Health?
- c. Did ECU Health bill more than the reasonable value of the services for the CT scan that Mr. Cansler and class members received, and, that other class members received?
- d. What was a reasonable price for a CT scan for Mr. Cansler and for class members during the pertinent times?
- e. Are patients who paid more than the reasonable value of services for CT scans entitled to disgorgement of amounts they have paid to Defendants over and above the reasonable value of the services?
- f. Are patients who paid more than the reasonable value of services for CT scans entitled to declaratory judgment that they do not owe anything further on the debt and should not be subject to further debt collection efforts?
- g. Did FirstPoint engage in unlawful debt collection efforts with regard to the class members?
- h. Are class members entitled to damages against FirstPoint?

128. Under Rule 23(a)(3) the claims of the representative parties are typical of the claims of the class. Mr. Cansler received a CT scan from a ECU Health provider; signed a form which was not an enforceable written contract; was billed far above the reasonable value of the service;

and by law was only obligated to pay a reasonable amount. Moreover, on information and belief, his experience related to ECU Health's and FirstPoint's collection efforts are typical to those of the putative class.

129. Under Rule 23(a)(4), the representative party will fairly and adequately protect the interests of the class.

130. Under Rule 23(b)(1), a class action may be maintained because Rule 23(a) is satisfied and prosecuting separate actions by or against individual class members would create a risk of: (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

131. Further, under Rule 23(b)(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

132. Further, under Rule 23(b)(3), the questions of law or fact common to class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

133. In the alternative, the Court should certify an issue class with regard to one or more of the relevant issues that are stated herein. Fed. R. Civ. P. 23(c)(4).

VI. CLAIMS FOR RELIEF

COUNT ONE: VIOLATION OF THE NORTH CAROLINA UNFAIR AND DECEPTIVE TRADE PRACTICES ACT (UDTPA), N.C.G.S. § 75-1.1, *et seq.* (ECU Health Defendants)

134. All above-alleged paragraphs are incorporated by reference.

135. During the pertinent times, without a valid and enforceable contract with the consumer, ECU Health systematically overcharged private insurance patient healthcare consumers, including Mr. Cansler, for CT scans and other services.

136. ECU Health Defendants attempted to charge Mr. Cansler a price for a CT scan that was far in excess of the amount that any reasonable consumer ought to pay.

137. The amount for which ECU Health Defendants claimed Mr. Cansler was responsible—nearly \$3,000 even after all concessions—was several times higher than what it should have been.

138. As part of ECU Health's business model, Mr. Cansler was not told of the unconscionably high price until a bill arrived well after his visit to the hospital.

139. For insured patient consumers, the price for a medical procedure is negotiated between the commercial insurer and ECU Health as a percentage of the chargemaster.

140. Consumers of healthcare services are not informed of the chargemaster rates for their procedures prior to receiving treatment. Indeed, during the relevant period, ECU Health had a policy of refusing to disclose prices to patients when patients asked.

141. Consumers are not informed of the negotiated rates for their procedures prior to receiving treatment and prior to 2021 could not reasonably ascertain those rates themselves.

142. At all times relevant to this Complaint, ECU Health Defendants refused to advise consumers of the cost of their services, and consumers did not and could not discover what Defendants claimed they were owed until well after treatment.

143. At all times relevant to this Complaint, the admission agreement ECU Health Defendants required all patients to sign did not contain any price term or any method capable of making the price known. It was therefore only enforceable for purposes of seeking to enforce collection of a reasonable price.

144. When consumers are unable to pay ECU Health's exorbitant rates, ECU Health's send bill after bill, demanding payment on such short timelines that bills can arrive after the payment due date.

145. When consumers are unable to pay the bill or when they dispute the bill, ECU Health Defendants send patients to collections.

146. ECU Health Defendants and Defendant FirstPoint repeatedly threaten consumers' credit scores.

147. ECU Health Defendants' conduct during the pertinent times has been unfair and deceptive within the meaning of the UDTPA.

148. ECU Health Defendants' relevant unfair and deceptive conduct during the pertinent times affected commerce within the meaning of the UDTPA.

149. ECU Health's billing and debt-collection practices underlying this claim are not the rendering of a professional service, because they were not rendered by a physician and because they are not directly related to the rendering of a professional service. Rather, they are a business practice and thus within UDTPA's definition of "commerce."

150. ECU Health could charge a reasonable, transparent price to patients for CT scans without affecting the quantity or quality of service ECU Health provides, because a reasonable price would ensure that ECU Health makes a profit each time it provides the service.

151. ECU Health Defendants' relevant unfair and deceptive conduct during the pertinent times was a substantial factor in causing injury to the Plaintiff and was a cause of the harm to Plaintiff and class members.

152. Plaintiff relied to his detriment on ECU Health Defendants' misrepresentations and actionable omission, and but for ECU Health Defendants' unfair and deceptive conduct, Plaintiff would not have been deemed to owe approximately \$3,000.

153. As a direct and proximate result of ECU Health Defendants' engagement in unfair and deceptive trade practices in and affecting commerce, Plaintiff and the class were damaged.

154. Accordingly, Plaintiff and class members are entitled to an award of actual and treble damages and attorney's fees and costs.

**COUNT TWO: DECLARATORY AND INJUNCTIVE RELIEF AND RECOVER OF
OVERPAYMENT
(ECU Health Defendants)**

155. All above-alleged paragraphs are incorporated by reference.

156. Under the Declaratory Judgment Act, “[i]n a case of actual controversy within its jurisdiction, ... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.” 28 U.S.C. § 2201(a).

157. Under 28 U.S.C. § 2202, “[f]urther necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.”

158. Mr. Cansler and class members signed an “Authorization & Consent for Treatment and Assignment of Benefits” or similar consent to treatment forms. These forms did not contain any price term or reference to a price that the patients could read and understand.

159. Because Mr. Cansler and class members never agreed to pay Defendants’ inflated prices, Defendants are entitled only to a reasonable price for the services they provided. This is because the consent form’s open price term either (a) rendered any such contract unenforceable, or (b) created an implied-in-fact contract with the price term to be filled in by a court. In either event, the price to which ECU Health is entitled is the reasonable value of the services it provides, under the doctrine of *quantum meruit*.

160. Mr. Cansler and class members are entitled to a declaratory judgment that they owe Defendants no more than the reasonable price for the medical services they received.

161. As described herein, an actual controversy has arisen and now exists as to whether Defendants implemented and maintained reasonable billing and hospital bill debt collection procedures and practices.

162. A judicial determination of this issue is necessary and appropriate at this time under the circumstances to prevent a continuation of improper billing and collection conduct and practices by ECU Health Defendants.

163. ECU Health Defendants were entitled to no more than the reasonable price for medical services.

164. The most recently Mr. Cansler and his family were subjected to collection efforts was on May 26, 2021. They have a reasonable concern that they will be subjected to further collection efforts into the future. They have standing to seek a declaratory judgment.

165. Plaintiff and class members are entitled to a declaratory judgment that ECU Health Defendants are only allowed to undertake to collect the reasonable value of their service and Plaintiff and class members are entitled to disgorgement of overpayments received by the Defendants.

**COUNT THREE: FAIR DEBT COLLECTION PRACTICES ACT (FDCPA),
15 U.S.C. § 1692 *et seq.*
(Defendant FirstPoint)**

166. All above-alleged paragraphs are incorporated by reference.

167. FirstPoint is a “debt collector” as defined by the FDCPA. 15 U.S.C. § 1692a(6).

168. Plaintiff is a “consumer” within the meaning of 15 U.S.C. § 1692a(3).

169. During the pertinent times, Defendant FirstPoint violated the FDCPA by telephoning Plaintiff’s spouse after Defendant received a communication from Plaintiff instructing Defendant not to telephone further. *See* 15 U.S.C. § 1692c(c) & (d); 12 C.F.R. § 1006.6(a)(1); 12 C.F.R. § 1006.14(h)(1).

170. Defendant FirstPoint violated the FDCPA by telephoning Plaintiff at his place of work after Defendant received a communication from Plaintiff instructing Defendant not to telephone further. *See* 15 U.S.C. § 1692c(c); 12 C.F.R. § 1006.6(b)(3); 12 C.F.R. § 1006.14(h)(1).

171. The FDCPA prohibits a debt collector from misrepresenting the character, amount, or legal status of any debt. 15 U.S.C. § 1692e(2)(A); 12 C.F.R. § 1006.18(b)(2)(i). During the pertinent times, Defendant FirstPoint violated the FDCPA by seeking to collect on an unlawful and void debt. The FDCPA bars the collection of any amount unless the amount is expressly

authorized by the agreement creating the debt or permitted by law. 15 U.S.C. § 1692f(1). Here, there was no legally valid agreement to create the debt.

172. Due to Defendant FirstPoint's violations of the FDCPA, under 15 U.S.C. § 1692k Plaintiff is entitled to recover (1) any actual damage sustained by Plaintiff as a result of such violations; (2) such additional damages as the court may allow, but not exceeding \$1,000; (3) such amount as the Court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or one per centum of the net worth of the debt collector; and (4) the costs of the action, together with a reasonable attorney's fee as determined by the Court.

**COUNT FOUR: NORTH CAROLINA COLLECTION AGENCY ACT (NCCAA),
N.C.G.S. § 58-70-1, et seq.
(Defendant FirstPoint)**

173. All above-alleged paragraphs are incorporated by reference.

174. FirstPoint is a "collection agency" as defined by the NCCAA, N.C.G.S. §§ 58-70-15 and 58-70-90(1).

175. Plaintiff is a "consumer" pursuant to N.C.G.S. § 58-70-90(2).

176. The subject medical bill and purported obligation was a "debt" pursuant to N.C.G.S. § 58-70-90(3).

177. During the pertinent times, Defendant FirstPoint violated the NCCAA by telephoning Plaintiff at his place of work after Defendant received a communication from Plaintiff instructing Defendant FirstPoint not to contact him further. N.C.G.S. § 58-70-100(4).

178. During the pertinent times, Defendant FirstPoint violated the NCCAA by seeking to collect on an unlawful and void debt. N.C.G.S. § 58-70-95(8).

179. Under N.C.G.S. § 58-70-130, as a result of its violation of the NCCAA Defendant FirstPoint is liable for any actual damages sustained by the debtor as a result of the violation and a penalty in such amount as the court may allow between \$500 and \$4000 per violation and attorney's fees and costs.

**COUNT FIVE: BREACH OF CONTRACT
(ECU Health Chowan Hospital Defendant)**

180. All above-alleged paragraphs are incorporated by reference.

181. During the pertinent times, ECU Health Chowan Hospital and Plaintiff Cansler entered into a contract for medical services including for a CT scan. Likewise, similarly situated class members entered into contracts with ECU Health Chowan Hospital for CT scans.

182. Each contract had no explicit price term or no reference to any method making the price term knowable. Instead, each contract required the patient to pay "all charges" ECU Health Chowan Hospital would later charge.

183. Because the contract had a silent price term, a reasonable price term is implied under North Carolina law. Where a patient receives medical care but does not agree on a price term (or a method of making the price capable of being known), the law implies a promise that the patient will pay the provider the reasonable costs of the services.

184. ECU Health charged in excess of a reasonable price for the CT scan that Plaintiff received on the date in question. ECU Health likewise charged in excess of a reasonable price with regard to CT scans provided to numerous class members. ECU Health was paid, in the aggregate, an amount from the Plaintiff and his plan, an amount that exceeded a reasonable amount. Likewise, ECU Health was paid amounts from class members and their plans that exceeded a reasonable amount.

185. By overcharging the Plaintiff and class members, and by not charging a reasonable price, by seeking aggressive collection actions against Plaintiff and class members, and in many instances by collecting an amount in excess of what the contract allowed, ECU Health Chowan Hospital breached its contract with Plaintiff and class members.

186. As a proximate result of the breach, the Plaintiff and class members were damaged.

187. As a remedy for Defendant's breach of contract, the Plaintiff and class members are entitled to damages measured per the remedy of disgorgement, consisting of a refund or recoupment of the amount of his overpayment.

**COUNT SIX: UNJUST ENRICHMENT
(ECU Health Chowan Hospital Defendant)**

188. All above-alleged paragraphs are incorporated by reference.

189. This claim is pled in the alternative to Count Five. Because the parties lack an enforceable contract, under principles of quasi-contract, ECU Health Chowan Hospital is only entitled to pursue a recovery in *quantum meruit*, which amounts to payment for the reasonable value of its services.

190. During the pertinent times, the Plaintiff conferred a benefit on the Defendant. Likewise, similarly situated class members conferred benefits on the Defendant. During the pertinent times, Plaintiff and class members conferred a measurable benefit to ECU Health Chowan Hospital, ECU Health Chowan Hospital knowingly and voluntarily accepted the benefit, and the benefit was not given gratuitously.

191. During the pertinent times, Defendant, demanded to be paid, and was paid, benefits in form of monetary payments, from Plaintiff and others similarly situated, in excess of the monetary amounts they owed toward the reasonable value of the CT scan, and caused Plaintiff and

class members to confer a monetary benefit on the Defendant in excess of what they would have paid had the reasonable value of the service been applied.⁴

192. As a remedy for Defendant's unjust enrichment, the Plaintiff is entitled to the remedy of disgorgement consisting of a refund or recoupment of the amount of his overpayment. Furthermore, similarly situated class members are likewise entitled to refunds.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff respectfully demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter judgment on his behalf as follows:

- A. That Plaintiff and class members are entitled to a determination of liability on each of the claims stated herein;
- B. That under the circumstances any debt purportedly owed by Plaintiff to any of Defendants should be deemed void and unenforceable;
- C. That a class may properly be certified under Rule 23 with the Plaintiff as the class representative and the undersigned counsel as class counsel;
- D. That judgment be entered against Defendants in favor of the Plaintiff and class members;
- E. That the Court enter appropriate declaratory and injunctive relief as to Plaintiff and class members;
- F. That the Court award Plaintiff and class members disgorgement and/or compensatory, actual, statutory and treble damages in an amount to be determined at trial;

⁴ A hypothetical is provided to reflect how the damages may be calculated: Assume that the reasonable value of the CT scan is \$600. The provider sends the plan and the plaintiff a bill for \$700 for the CT scan. Assume the individual plaintiff has paid \$200 and plan has paid \$500, thereby paying off the bill of \$700. If provider had instead only billed the reasonable value, that is, sent a bill for \$600, and plaintiff and the plan each pay the same relative proportions, then the plaintiff would pay \$171 and the plan would pay \$429. Plaintiff's damages in this scenario would be \$29.

- G. That the Court award Plaintiff and class members his and their costs and expenses of suit, and reasonable attorneys' fees as provided by law; and
- H. For such other and further relief as the Court may deem just and proper.

This the 11th day of July, 2022.

FAIRMARK PARTNERS LLP

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Counsel for Plaintiff and the putative class

CERTIFICATE OF SERVICE

The undersigned hereby shows that by filing this document electronically on July 11, 2022, he caused the electronic ECF filing system to cause electronic service to be effected on all counsel of record.

This the 11th day of July, 2022.

FAIRMARK PARTNERS LLP

/s/ Jamie Crooks

Jamie Crooks (admitted *pro hac vice*)

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
No. 4:22-cv-00014-FL

**GEORGE CANSLER, on his own behalf, and
on behalf of a class of those similarly situated,**

Plaintiff,

v.

**UNIVERSITY HEALTH SYSTEMS OF
EASTERN CAROLINA, INC., EAST
CAROLINA HEALTH-CHOWAN, INC.,
~~HALIFAX REGIONAL MEDICAL
CENTER, INC., ROANOKE VALLEY
HEALTH SERVICES, INC., PITT COUNTY
MEMORIAL HOSPITAL, INC., DUPLIN
GENERAL HOSPITAL, INC., EAST
CAROLINA HEALTH-BEAUFORT, INC.,
EAST CAROLINA HEALTH-BERTIE,
INC., EAST CAROLINA HEALTH-
HERITAGE, INC., THE OUTER BANKS
HOSPITAL, INC., VIDANT MEDICAL
GROUP AFFILIATES, LLC, VIDANT
MEDICAL GROUP, LLC, VIDANT
INTEGRATED CARE, LLC, and
FIRSTPOINT COLLECTION
RESOURCES, INC., and FIRSTPOINT
COLLECTION RESOURCES, INC.,~~**

Defendants.

**FIRST AMENDED CLASS
ACTION COMPLAINT**

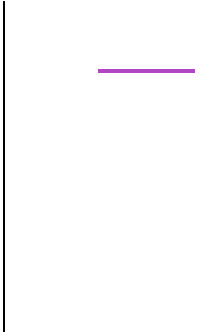


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Plaintiff, George Cansler, through counsel, acting on his own behalf and on behalf of a putative class of those similarly situated, brings this action for breach of contract, unjust enrichment, violations of the North Carolina Unfair and Deceptive Trade Practices Act (“UDTPA”), N.C.G.S. § 75-1 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201(a) *et seq.*, the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, and the North Carolina Collection Agency Act (“NCCAA”), N.C.G.S. § 58-70 *et seq.*, against Defendants University Health Systems of Eastern Carolina, Inc., East Carolina Health-Chowan, Inc., ~~Halifax Regional Medical Center, Inc., Roanoke Valley Health Services, Inc., Pitt County Memorial Hospital, Inc. Duplin General Hospital, Inc., East Carolina Health-Beaufort, Inc., East Carolina Health-Bertie, Inc., East Carolina Health-Heritage, Inc., The Outer Banks Hospital, Inc., Vidant Medical Group Affiliates, LLC, Vidant Medical Group, LLC, Vidant Integrated Care, LLC (collectively, “Vidant”), (collectively, “ECU Health”¹), and FirstPoint Collection Resources, Inc. (“FirstPoint”), and states as follows based on personal knowledge, investigation of counsel, and information and belief:~~

I. NATURE OF THE ACTION

1. This action concerns unfair and deceptive billing and collection practices engaged in by ~~Vidant~~ECU Health and FirstPoint. Defendants grossly overcharged Mr. Cansler without having any enforceable agreement with him to pay ~~Vidant’s~~ECU Health’s inflated prices. Defendants then utilized aggressive, manipulative, and illegal collection practices in an attempt to

¹ Prior filings in this case referred to ECU Health as “Vidant” or “Vidant Health,” because at the time of the filing of the original Complaint, ECF 1, the hospital system operated under this name. In early 2022, Vidant announced that it would be rebranding as ECU Health. See Lance Martin, *ECU Health unveils logo as rebranding begins next month*, rrspin.com (Apr. 14, 2022), available at <https://www.rrspin.com/news/5795-ecu-health-unveils-logo-as-rebranding-begins-next-month.html>. This First Amended Complaint thus refers to these entities as ECU Health, although at the time of the relevant events, the system was known as Vidant Health.

coerce him to pay an unreasonable amount to which he had never agreed. Indeed, VidantECU Health had a policy of not disclosing to patients like Mr. Cansler the prices of Vidant'sECU Health's services. This was despite the fact that VidantECU Health was aware that many patients, like Mr. Cansler, would have to bear the vast majority of that expense after the services were provided. Mr. Cansler's experience is typical of insured patients who receive care at VidantECU Health facilities. He therefore sues for damages and declaratory relief both for himself and a class of those similarly situated.

II. THE PARTIES

A. A. Plaintiff.

2. Plaintiff George Cansler is a resident of Edenton, North Carolina, Chowan County.

B. B. Defendants.

3. Defendant University Health Systems of Eastern Carolina, Inc., formerly d/b/a Vidant Health and currently d/b/a ECU Health, is a North Carolina nonprofit corporation. Its principal place of business is located at 800 W.H. Smith Boulevard, Greenville, NC 27834, Pitt County. It may be served with process through its registered agent at P.O. Box 6028, Greenville, NC 27835.

4. VidantECU Health is a not-for-profit, 1,447-bed hospital system that serves more than 1.4 million people in 29 counties in Eastern North Carolina, as well as residents of Virginia. The system is made up of nine hospitals and more than 12,000 employees. Its estimated revenue for the year 2017 was \$1,693,152,000. It is one of the largest health systems in the State. It is sophisticated as an organization and has far greater resources than an individual consumer. "Vidant Health" appears on the bills Mr. Cansler received, because that was the name under which the health system did business. In May 2022, the system changed its brand name to ECU Health.

On information and belief, in the past VidantECU Health has made collection claims in consumer bankruptcies regarding medical bills. On information and belief, VidantECU Health primarily controlled and directed the billing practices alleged herein.

5. Defendant East Carolina Health-Chowan, Inc., formerly d/b/a Vidant Chowan Hospital, (“ECU Health Chowan Hospital”), is a North Carolina nonprofit corporation. Its principal place of business is located at 800 W.H. Smith Boulevard, Greenville, NC 27834. It may be served with process through its registered agent Michael Waldrum at P.O. Box 6028, Greenville, NC 27835. As described below, the Plaintiff’s relevant service occurred at VidantECU Health Chowan Hospital. It is one of the hospitals that operates under ECU Health’s umbrella.

~~6. Defendant Halifax Regional Medical Center, Inc., operating under the name Vidant North Hospital, is a North Carolina nonprofit corporation. Its principal place of business is located at 800 W.H. Smith Boulevard, Greenville, NC 27834. It may be served with process through its registered agent Michael Waldrum at P.O. Box 6028, Greenville, NC 27835.~~

~~7. Defendant Roanoke Valley Health Services, Inc., operating under the name Vidant North Hospital, is a North Carolina nonprofit corporation. Its principal place of business is located at 2100 Stantonsburg Road, Greenville, NC 27834. It may be served with process through its registered agent Michael Waldrum at 800 W.H. Smith Boulevard, Greenville, NC 27834.~~

~~8. Defendant Pitt County Memorial Hospital, Inc., operating under the name Vidant Medical Center, is a North Carolina nonprofit corporation. Its principal place of business is located at 800 W.H. Smith Boulevard, Greenville, NC 27834. It may be served with process through its registered agent Michael Waldrum at P.O. Box 6028, Greenville, NC 27835.~~

~~9. Defendant Duplin General Hospital, Inc., operating under the name Vidant Duplin Hospital, is a North Carolina nonprofit corporation. Its principal place of business is located at 800~~

W.H. Smith Boulevard, Greenville, NC 27834. It may be served with process through its registered agent Michael Waldrum at P.O. Box 6028, Greenville, NC 27835.

10. — Defendant ~~East Carolina Health Beaufort, Inc., operating under the name Vidant Beaufort Hospital, is a North Carolina nonprofit corporation. Its principal place of business is located at 800 W.H. Smith Boulevard, Greenville, NC 27834. It may be served with process through its registered agent Michael Waldrum at P.O. Box 6028, Greenville, NC 27835.~~

11. — Defendant ~~East Carolina Health Bertie, Inc., operating under the name Vidant Bertie Hospital, is a North Carolina nonprofit corporation. Its principal place of business is located at 800 W.H. Smith Boulevard, Greenville, NC 27834. It may be served with process through its registered agent Michael Waldrum at P.O. Box 6028, Greenville, NC 27835.~~

12. — Defendant ~~East Carolina Health Heritage, Inc., operating under the name Vidant Edgecombe Hospital, is a North Carolina nonprofit corporation. Its principal place of business is located at 800 W.H. Smith Boulevard, Greenville, NC 27834. It may be served with process through its registered agent Michael Waldrum at P.O. Box 6028, Greenville, NC 27835.~~

13. — Defendant ~~The Outer Banks Hospital, Inc., is a North Carolina nonprofit corporation. Its principal place of business is located at 4800 South Croatan Highway, Nags Head, NC 27959. It may be served with process through its registered agent Michael Waldrum at P.O. Box 6028, Greenville, NC 27835.~~

14. — Defendant ~~Vidant Medical Group Affiliates, LLC, is a North Carolina limited liability company. Its sole member is Vidant Medical Group, LLC, a North Carolina limited liability company. Vidant Medical Group Affiliates, LLC's principal office is located at 800 W.H. Smith Boulevard, Greenville, NC 27834. It may be served with process through its registered agent, Michael R. Waldrum, at P.O. Box 6028, Greenville, NC 27835.~~

~~15. Defendant Vidant Medical Group, LLC, is a North Carolina limited liability company. Its sole member is Defendant University Health Systems of Eastern Carolina, Inc. Its principal office is located at 2100 Stantonsburg Road, Greenville, NC 27834. It may be served with process through its registered agent, Michael R. Waldrum, at P.O. Box 6028, Greenville, NC 27835. On information and belief, in the past Vidant Medical Group, LLC has made collection claims in consumer bankruptcies regarding medical bills.~~

~~16. Defendant Vidant Integrated Care, LLC, is a North Carolina limited liability company. Its sole member is Defendant University Health Systems of Eastern Carolina, Inc. Its principal office is located at 800 W.H. Smith Boulevard, Greenville, NC 27834. It may be served with process through its registered agent, Michael R. Waldrum, at P.O. Box 6028, Greenville, NC 27835.~~

~~17. On information and belief, during the pertinent times, Vidant Medical Group Affiliates, LLC, Vidant Medical Group, LLC and Vidant Integrated Care, LLC participated with Vidant Health and the Vidant hospitals in effectuating the billing practices alleged herein and are each jointly and severally liable due to their direct active involvement in the subject practices.~~

~~18.6.~~ Defendant FirstPoint is a North Carolina corporation. Its principal place of business is located at 225 Commerce Pl., Greensboro, NC 27401. It may be served with process through its registered agent Anthony Robertson at 225 Commerce Pl., Greensboro, NC 27401. It holds a collection agency license under N.C.G.S. § 58-70-1 and is a “debt collector” under the FDCPA, 15 U.S.C. § 1692a(6) and a “collection agency” under N.C.G.S. §§ 58-70-15 and 58-70-90(1).

III. JURISDICTION AND VENUE

~~19.7.~~ This Court has subject matter jurisdiction over Plaintiff’s federal claim under the FDCPA pursuant to 28 U.S.C. § 1331, because the claim arises under federal law. The Court has

supplemental jurisdiction over any state law claims pursuant to 28 U.S.C. § 1367, because they arise out of the same transactions or occurrences.

20.8. In addition, the Class Action Fairness Act, or CAFA, 28 U.S.C. § 1332(d), establishes subject matter jurisdiction, in that the putative class meets CAFA jurisdictional requirements of minimal diversity, because on information and belief some class members live in Virginia; there are 100 or more putative class members, and more than \$5 million in controversy.

21.9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c) and 18 U.S.C. § 1965, because VidantECU Health transacts business in, is found in, or has agents in this judicial district, and because some of the actions giving rise to this complaint took place within this district.

22.10. The Court has personal jurisdiction over the Defendants.

IV. FACTUAL BACKGROUND

23.11. VidantECU Health and FirstPoint have operated a system that saddles patients with astonishingly high medical bills. VidantECU Health knows that the prices it charges patients for medical services are unreasonably high. Indeed, when patients ask VidantECU Health representatives about the cost of care before they receive a service, VidantECU Health has had a policy of refusing to tell patients the price it plans to charge. Thus, VidantECU Health made it impossible for patients to make an informed financial decision about their care, and patients could not—and did not—willingly consent to pay Vidant’sECU Health’s unreasonable, undisclosed prices.

24.12. After patients received care, VidantECU Health compounded the financial harm patients suffered by harassing them to pay these excessive fees, including by sending their bills to FirstPoint and implicitly threatening their credit score.

25.13. In this way, and as described more fully below, Defendants have used and continue to use an unfair, deceptive scheme designed to extract undisclosed and unreasonably high prices from patients.

A. ~~A.~~ **How Prices of Medical Services Are Set for Patients with Commercial Insurance.**

26.14. With respect to patients with commercial insurance (as opposed to government insurance such as Medicare or Medicaid), the market for hospital services is different to other markets because the person consuming the hospital services, the patient, does not negotiate—and in many cases, such as here, cannot even know beforehand—the costs of the medical services they are consuming.

27.15. Instead, commercial health plans, such as Blue Cross Blue Shield of North Carolina (“Blue Cross”), purchase medical services for the benefit of their insured members, the consumers. Commercial health plans negotiate with hospitals for the price the plans will pay for medical services, known as the “allowed amount,” before services are consumed by members.

28.16. Commercial health plans do not negotiate with hospitals on a service-by-service basis; rather, they negotiate with hospitals for bundles of services that the health plan will offer to members as “in-network” benefits. If the health plan and hospital reach a deal for a bundle of services (for instance, all acute inpatient hospital services), the hospital will be considered in-network for every service in that bundle. This means that for any service in that bundle, if a commercial health plan’s member receives that service from the hospital, the health plan will pay the hospital some share of the allowed amount those two parties negotiated for that service.

29.17. Under most commercial health plans, the patient will then be responsible for paying the share of the allowed amount that the insurance company did not pay. For insured patients with so-called “high deductible” plans, such as Mr. Cansler, the patient bears responsibility for paying

the vast majority of the allowed amount for a particular procedure (*e.g.*, 80%), until the deductible is met. Thus, for the first several thousand dollars of medical treatment a patient receives each year, the patient pays a significant majority of that cost.

30.18. Because of the ever-rising costs of health care, many group and individual private insurance plans have high deductibles or other mechanisms that place a significant payment obligation on the consumer.

31.19. Healthcare consumers are in a unique posture to be exploited by a revenue-minded hospital system because they generally do not know nor consent to the costs prior to the service. Rather, they reasonably assume that the hospital system will have the integrity to use reasonable prices.

32.20. Consumers are unaware that their treating doctors, as well, generally have no knowledge of the prices being charged by the hospitals for their services nor do they have any control over what those prices should be. Rather, such functions are carried out by an entirely separate billing and administrative component of the system.

33.21. Each hospital keeps its own “chargemaster,” a list of all of the hospital’s billable items and the corresponding charges. These charges are set by the hospital and are not the reasonable amounts consumers would expect to be charged.

34.22. Patients are in general not privy to the allowed amounts their insurer has negotiated with hospitals for various services. These bundled prices are a function of the artificial chargemaster prices and are not disclosed to patients. At no point do patients agree to specific prices for specific procedures. Thus, despite the fact that the patient is the one consuming the services and will often bear a significant amount of the financial responsibility for the services they consume, a patient like Mr. Cansler does not know before they consume a service how much

it will cost them. Compounding matters, at all times relevant to this litigation, ~~Vidant~~ECU Health followed a corporate-a policy of not disclosing the allowed amount of its services to patients even if they asked.

~~35-23.~~ In the absence of an agreement between the patient and the hospital as to a particular service's price, the hospital is not entitled to the full chargemaster for that service, because the chargemaster is much higher than the reasonable cost of the service.

24. The chargemaster has been described as the "central mechanism for the revenue cycle" of hospitals, but its defining feature is that it is "devoid of any calculation related to cost" and is not based on market transactions. Rather, it is set in order to maximize a hospital's profits and increase leverage in bargaining with insurers and patients. Thus, charging a patient a chargemaster or some "discounted" share (e.g., 80%) of the chargemaster is not a reasonable price.

~~36-25.~~ One measure of the reasonable price for a service is the rate that Medicare pays, because Medicare ties the prices it pays for a given service to the cost of providing that service plus a small profit margin. For most services, the chargemaster price for a service is many times higher than what a hospital would receive for that service from Medicare.

~~37-26.~~ For example, the 2018 Medicare rate for the CT scan that Mr. Cansler received (discussed in more detail below) was \$302.60. However, ~~Vidant's~~ECU Health's chargemaster for that same service was \$4,000, more than 13 times higher. And the allowed amount for that CT scan under Mr. Cansler's plan was \$3,576, more than 11 times the Medicare rate.

~~38-27.~~ This huge disparity between the Medicare rate and the price ~~Vidant~~ECU Health charges individuals like Mr. Cansler is not limited to CT scans. For many other common

procedures, VidantECU Health charges patients more than 10 times the rate that Medicare would pay for that identical service.

39.28. VidantECU Health patients never assent to health care providers' chargemasters, nor would they if they had a meaningful choice.

40.29. Neither Vidant's ECU Health's chargemasters nor the allowed amounts they negotiate with commercial health plans are reasonable rates for the relevant services.

41.30. Under North Carolina law, where there is no contract specifying the rate to be charged for treatment, a hospital is entitled only to the reasonable value of the service it provides.

B. B.—Background on VidantECU Health, its Unreasonable Prices, and its Refusal to Disclose Prices.

42.31. University Health Systems of Eastern Carolina, Inc. was created in 1997. In 2011, it changed its “doing business as” name to Vidant Health. -In early 2022, the system announced it was changing its branded name again, now to ECU Health.

43.32. VidantECU Health controls and operates nine hospitals in Eastern North Carolina, including ECU Health Chowan Hospital. Each hospital is its own corporation, with VidantECU Health's CEO, Michael Waldrum, acting as the registered agent for all of them.

44.33. The VidantECU Health system is centrally controlled and VidantECU Health issues corporate policies addressing financial management that each of the hospital corporations is expected to follow.

45.34. Each of the VidantECU Health hospitals keeps its own chargemaster. Each of the VidantECU Health hospitals' chargemaster and allowed amount rates for CT scans grossly exceed any reasonable value of the service. VidantECU Health hospitals charge similarly inflated chargemasters and allowed amounts for many other common procedures and services.

46.35. Medicare reimbursement prices are often used as benchmarks, representing a fair amount for the procedure.

47.36. The Medicare reimbursement price for a CT scan, abdominal and pelvis, CPT code 74176, in North Carolina in 2018 was \$302.60 and in 2021 was \$315.

48.37. During the pertinent times, VidantECU Health hospitals charged patients well in excess of that price for the same CT scan procedure. The 2021 chargemaster prices were:

- VidantECU Health Chowan Hospital: \$4,000,
- VidantECU Health Medical Center: \$4,996,
- VidantECU Health Edgecombe Hospital: \$4,720,
- The Outer Banks Hospital: \$4,200,
- VidantECU Health Duplin Hospital: \$3,785,
- VidantECU Health North Hospital: \$2,713.20,
- VidantECU Health Beaufort Hospital: \$2,533,
- VidantECU Health Bertie Hospital: \$1,785, and
- VidantECU Health Roanoke Hospital: \$1,727.

49.38. Vidant'sECU Health's business practices have sought to harass patients into paying theirs excessive prices. -During the pertinent times, VidantECU Health set unreasonable prices, deliberately did not disclose its prices to patients like Mr. Cansler prior to treatment, sought to bill the patients for the excessive prices after the fact and, when patients were unable or unwilling to pay the inflated prices, sought to coerce them into payment by threatening their credit score and engaging in collection efforts.

50.39. As of 2018, VidantECU Health refused to disclose its costs to patients prior to treatment, even if they asked. VidantECU Health claimed that the Emergency Medical Treatment and Labor Act ("EMTALA"), 42 U.S.C. § 1395dd, prohibited it from informing patients of the costs of care, and, while knowing that patients would not be disclosed the costs until after the care, set egregiously high costs for the care.

51.40. EMTALA has never prohibited hospitals from disclosing chargemasters or allowed amounts to patients. EMTALA requires that hospital emergency departments provide a medical screening examination to any person who comes to the emergency department and requests an examination. EMTALA prevents the hospital from refusing to examine or treat a patient based on their insurance status, ability to pay, national origin, race, creed, or color.

52.41. VidantECU Health now provides a cost estimator on its website, which demonstrates that VidantECU Health does not believe cost disclosure prior to treatment is a violation of EMTALA. On information and belief, the cost estimator was not available prior to 2021.

53.42. On information and belief, VidantECU Health created the cost estimator to comply with 45 C.F.R. § 180.40, which required hospitals to disclose such prices as of January 1, 2021. There has been no substantive change to EMTALA that would alter what VidantECU Health is or is not permitted to disclose with respect to the prices of services.

54.43. In justifying its policy of refusing to disclose prices in advance, VidantECU Health by letter dated December 12, 2019 to Mr. Cansler claimed that “[i]n addition to being a violation of federal law,” “[t]he discussion of healthcare pricing or costs with patients can deter patients and their families from seeking assistance that they may desperately need.” Since 2019, there has been no substantive change to patient motivations that would alter what VidantECU Health can disclose to patients about the prices of its services. And yet, VidantECU Health now makes ~~this~~ some of this information available on its website, belying its EMTALA contentions that somehow that statute ties its hands.

44. On information and belief, ECU Health's compliance with 45 C.—F.R. § 180.40—*i.e.*, making more transparent its prices and negotiated rates—has not affected the level of medical service ECH Health provides.

C. Background on Defendants' Unlawful Means of Attempting to Collect Debts.

55.45. VidantECU Health coerces patients into paying their excessive prices by threatening to send them to collections, report them to credit reporting agencies, damaging their credit scores, and imposition of interest and legal fees on top of a billed amount that is unreasonable and based on a contract that is unenforceable for lack of a price term or contains an open price term.

56.46. VidantECU Health sends repeated bills to patients stating short payment deadlines.

57.47. If a patient does not pay Vidant'sECU Health's exorbitant rates on their timeline, they are sent "Final Notices" threatening to refer the account to collections and/or credit reporting agencies with even shorter ten-day deadlines.

58.48. The "Final Notices" can arrive after the supposed deadline due to mail delays for VidantECU Health's primarily rural customer base.

59.49. VidantECU Health then refers the bills to its debt collector, FirstPoint, which threatens to send the debt for listing on the patient's credit report. In its initial collection letter, FirstPoint recites that it may report the debt to credit reporting agencies.

60.50. FirstPoint is regularly engaged in the collection of debts from consumers using the means and instrumentalities of interstate commerce, including but not limited to, the United States mail and interstate telephone communications.

61.51. While not a licensed debt collector itself, VidantECU Health through its billing office aided and abetted FirstPoint in its debt collection activities and the VidantECU Health and

FirstPoint entities engaged in concerted action, for example when VidantECU Health would “recall” the debt from FirstPoint only to later send another “Final Notice” then transmit the file back to FirstPoint.

D. ~~D.~~ Facts Regarding Plaintiff and his Experience with Defendants’ Unlawful Conduct.

62:52. Mr. Cansler has a Master’s Degree in Accounting, and works in managerial capacity at a private company. As an accountant, he is used to strict ethical and legal compliance in economic transactions.

63:53. At all times relevant to this lawsuit, Mr. Cansler paid for private group health insurance from Blue Cross.

64:54. At all times relevant to this lawsuit, Mr. Cansler had a “Blue Options” plan.

65:55. Under the Blue Options plan, VidantECU Health Chowan Hospital was an “in-network hospital,” meaning that Blue Cross and VidantECU Health had negotiated allowed amounts, or discounts, for most procedures Blue Cross’s insured patients were likely to receive. Subscribers of Blue Options therefore are encouraged to seek care at ECU Health Chowan Hospital.

66:56. Blue Cross negotiates rates that it pays VidantECU Health Chowan Hospital that are lower than Vidant’sECU Health’s chargemaster. (i.e., discounts from the chargemaster). However, for many plans, including Mr. Cansler’s Blue Options plan, the allowed amounts remain unreasonably high, for many services in excess of 10 times the Medicare rate for those procedures. ECU Health Chowan Hospital sets its chargemaster amounts such that even after the discount subscribers like Mr. Cansler are obligated to pay amounts that are unreasonably high.

E.

E. Mr. Cansler Receives Care from VidantECU Health Chowan Hospital.

67-57. On or about June 6, 2018, Mr. Cansler visited the VidantECU Health Chowan Hospital emergency room due to pain secondary to what he felt was a likely kidney stone (he subsequently passed the stone). Mr. Cansler had experienced kidney stones before, so he was highly confident that the pain he felt was due to a kidney stone.

68-58. Mr. Cansler has excellent credit and is not accustomed to having himself or his family on the receiving end of collection efforts.

69-59. Mr. Cansler went to VidantECU Health Chowan Hospital's emergency room because there were no urgent care facilities proximate to his home, and VidantECU Health Chowan Hospital did not have another mechanism for admitting patients with non-emergency but still time-sensitive medical issues, such as having a kidney stone. Mr. Cansler understood that his condition was not an emergency, and he would not have visited the emergency room if he had any other option for receiving medical care.

70-60. Upon arriving at VidantECU Health Chowan Hospital, Mr. Cansler paid \$100.

71-61. During his visit, he received, among other services for which there were charges, a CT scan.

72-62. Mr. Cansler's medical records reflect the existence of a form titled "Authorization & Consent for Treatment and Assignment of Benefits" signed by him on June 6, 2018, containing these representations among others:

- a. "I hereby agree to pay all charges of Facility that are not covered or paid within a reasonable time by any medical insurance/coverage, whether or not I am otherwise legally obligated to pay."
- b. "I understand that I am financially responsible to the Hospital and physicians for charges not paid by insurance. If an unpaid balance is sent to a collection agency, I will be responsible for any legal fees and/or interest associated with collection of debt."

~~73-63.~~ The term “charges” is not defined and the form does not contain any other price term. Under those circumstances, patients have not agreed to pay the inflated chargemaster or allowed amounts. Patients owe only the reasonable cost for that service.

~~74-64.~~ Had Mr. Cansler known that [VidantECU Health](#) would seek to hold him personally financially responsible for thousands of dollars for a CT scan, he would have elected not to receive the service at [VidantECU Health](#) on June 6, 2018. This would have been a medically appropriate decision.

F. ~~F.~~ Mr. Cansler receives bills with unreasonable prices to which he did not assent.

~~75-65.~~ On or about June 19, 2018, Blue Cross sent Mr. Cansler an Explanation of Benefits (“EOB”) statement. The EOB listed a total billed amount of \$6,251.70.

~~76-66.~~ According to the EOB, Mr. Cansler received member savings of \$662.68. Blue Cross paid \$1,326.11. The EOB noted that the amount the provider may bill Mr. Cansler was the remaining \$4,262.91, consisting of co-insurance of \$884.08 and \$3,378.83 within Mr. Cansler’s deductible. The provider billed \$4,000 for unspecified services.

~~77-67.~~ Mr. Cansler was shocked and surprised to receive a bill for over \$3,000 for a short visit to an in-network hospital.

~~78-68.~~ Mr. Cansler did not receive an itemized bill until September 2019, more than a year later and after he raised concerns. That itemized bill detailed that the \$4,000 charge was for “HB-CT ABDOMEN AND PELVIS W/O CONTRAST.” The bill listed the allowed amount for this procedure as \$3,576 with Blue Cross paying \$456.61 of that amount. This left \$3,119.39 which [VidantECU Health](#) claimed Mr. Cansler was required to pay for that CT scan.

~~79-69.~~ Before receiving that itemized bill in September 2019, [VidantECU Health](#) sent Mr. Cansler several other bills claiming that he owed thousands of dollars.

~~80.70.~~ On or about June 22, 2018, [VidantECU Health](#) sent Mr. Cansler an initial bill for \$4,162.91, noting that Mr. Cansler had paid \$100 toward the total. The bill stated that payment was due July 12, 2018.

~~81.71.~~ On or about July 22, 2018, [VidantECU Health](#) sent Mr. Cansler a second bill for \$4,162.91. The bill stated that payment was due August 11, 2018.

~~82.72.~~ On or about August 22, 2018, [VidantECU Health](#) sent Mr. Cansler a third bill for \$4,162.91. The bill stated that payment was due September 11, 2018.

~~83.73.~~ Mr. Cansler made three \$50 payments to keep his account in good standing between August and October 2018. While he disputed the amount owed, and the price for a CT scan struck him as outrageous, he was not a medical billing expert and was looking into the issue.

~~84.74.~~ On or about September 27, 2018, Mr. Cansler wrote a letter to [VidantECU Health's](#) central billing office disputing the charges and requesting further information.

~~85.75.~~ [VidantECU Health](#) placed Mr. Cansler's bill under review, claiming that they would reach out to him when the review was completed.

76. On April 7, 2019, ECU Health apparently applied an additional \$75.41 in payment to the bill in error. Payment was from Plaintiff for a different medical event and was mis-applied to the wrong invoice. Accordingly, the total amount Plaintiff is believed to have paid toward the CT scan was \$325.41 (\$100 plus \$150 plus \$75.41).

~~86.77.~~ On or about July 26, 2019, more than a year after he received care, [VidantECU Health](#) adjusted Mr. Cansler's bill down by \$184. While this bill was sent at some point to Mr. Cansler's insurer, Blue Cross, Mr. Cansler only learned about the reduction and the reasoning behind it when he reached out to the President of [VidantECU Health](#) Chowan Hospital, Brian Harvill.

87.78. As a result of the reduction in Mr. Cansler's amount owed, Blue Cross adjusted the amount it paid down as well. Blue Cross sent Mr. Cansler a revised EOB on or about December 4, 2018, adjusting the amount it covered from \$1,326.11 to \$1,227.42. The EOB showed that VidantECU Health billed ~~\$40004,000~~ for what we now know was the CT scan; the allowed amount for the CT scan was \$3,576.00; and "BCBSNC Paid" "\$456.61."

88.79. On or about July 29, 2019, VidantECU Health sent Mr. Cansler a "Final Notice." VidantECU Health did so without contacting Mr. Cansler to communicate that the review was complete. VidantECU Health now claimed Mr. Cansler owed \$3,871.70.

89.80. The Final Notice stated that "This is your FINAL NOTICE. Your account may be referred to an outside collection/credit reporting agency if full payment or satisfactory arrangements are not made within 10 days of the date of this letter."

90.81. Mr. Cansler did not receive the Final Notice until on or about August 14, 2019, already outside the ten-day window listed in the letter.

91.82. Eight of the nine VidantECU Health hospitals service rural areas and VidantECU Health is or should be aware that mail deliveries are slower in rural areas, potentially taking more than the ten-day window.

92.83. For Mr. Cansler, who had bill processing and bookkeeping responsibilities as part of his own career, it was shocking and surprising to be receiving a "FINAL NOTICE" from a large and well-known hospital system for an inflated, unreasonable charge he had never agreed to.

93.84. During an extensive back and forth with Mr. Cansler, VidantECU Health Chowan Hospital President Harvill blamed Mr. Cansler's high deductible plan for "pushing a lot of this invoice to you personally." Harvill told Mr. Cansler that 80% of patients at VidantECU Health Chowan Hospital are non-paying patients and, as a result, the other 20% must pay the hospital to

cover the 80% who cannot pay. VidantECU Health has publicly referred to this additional cost as a “hidden tax” that non-Medicaid or Medicare patients must pay without the knowledge that they are overpaying for services.

94.85. VidantECU Health eventually offered to apply a downward administrative adjustment of \$873 to Mr. Cansler’s bill, which Harvill described as a “cash payer discount.” This adjustment occurred only after Mr. Cansler pointed out multiple billing discrepancies and the wide variation in chargemaster prices across VidantECU Health hospitals, with VidantECU Health Chowan Hospital charging \$4,000 for the same procedure for which VidantECU Health Roanoke Hospital charges \$1,727. Even the significantly lower VidantECU Health Roanoke charge was more than five times the Medicare price for the same service.

95.86. Following the administrative adjustment, VidantECU Health claimed that Mr. Cansler still owed \$2,998.70.

96.87. On August 15, 2019, Plaintiff visited the business office at VidantECU Health where Jennifer (Business Office Manager) informed him that the review done by staff at the hospital had concluded the charges were correct. She said they had recently installed a new billing system and the Final Notice notification was sent in error as the bill had only recently come out of review. She said the account should not have gone to “threat of collection” status that quickly and apologized for the error. She then asked if he wanted to set up a payment plan. Mr. Cansler shared with Jennifer the Healthcare Blue Book (www.healthcarebluebook.com) documentation of a fair price for a CT scan. Jennifer responded to the effect that VidantECU Health was a private hospital and, essentially, that they could charge any price they wanted to for services.

97.88. Mr. Cansler attempted to continue to negotiate with VidantECU Health but was repeatedly rebuffed. VidantECU Health’s Risk Management Senior Administrator, Jamie Grady,

claimed in a letter dated December 12, 2019, that EMTALA prevented VidantECU Health from providing any cost information to patients prior to treatment.

98.89. On or about December 21, 2019, Mr. Cansler wrote a letter to Ms. Grady asking for an explanation of her claim that EMTALA prevented VidantECU Health from providing patients with cost information prior to treatment.

99.90. On or about January 3, 2020, VidantECU Health sent Mr. Cansler another Final Notice stating that “This is your FINAL NOTICE. Your account may be referred to an outside collection/credit reporting agency if full payment or satisfactory arrangements are not made within 10 days of the date of this letter.”

100.91. On or about January 23, 2020, Ms. Grady repeated her claim that EMTALA prevented VidantECU Health from providing cost information to its patients prior to treatment. She stated that Mr. Cansler’s account would be put on hold for 30 days so he could arrange payment.

101.92. Mr. Cansler responded to Ms. Grady’s letter on or about February 15, 2020, challenging the justifications offered in her letter.

102.93. On or about October 7, 2020, Mr. Cansler wrote another letter to Ms. Grady because he had not received any response.

103.94. On or about October 13, 2020, Mr. Cansler received a call from FirstPoint attempting to collect on the \$2,998.70 debt VidantECU Health had referred to it.

104.95. On or about October 17, 2020, Mr. Cansler received a letter from FirstPoint advising him that his debt had been turned over to them for collection.

~~105.96.~~ For Mr. Cansler, who had good credit, and who with his accounting background prided himself on being financially prudent, receiving this debt collection notice from FirstPoint was surprising and shocking.

~~106.97.~~ On or about October 17, 2020, Mr. Cansler responded to the letter from FirstPoint, advising that the debt was disputed. He asked that any future communications be in writing and that FirstPoint not call again.

~~107.98.~~ On or about November 11, 2020, FirstPoint responded to Mr. Cansler's October 17, 2020 letter by stating that they had verified the debt with ~~Vidant~~ECU Health.

~~108.99.~~ On or about November 18, 2020, Ms. Grady responded to Mr. Cansler's February 15 and October 7, 2020 letters stating that while ~~Vidant~~ECU Health was "under no obligation to pull [his] account from collection," she would be recalling the account from FirstPoint for 30 days "as a public relations gesture."

~~109.100.~~ On or about December 16, 2020, FirstPoint sent Mr. Cansler a letter informing him that ~~Vidant~~ECU Health had recalled his account from collections.

~~110.101.~~ On or about January 15, 2021, ~~Vidant~~ECU Health sent Mr. Cansler a bill for \$2,998.70. The bill stated that payment was due on February 4, 2021.

~~111.102.~~ On or about February 19, 2021, Mr. Cansler received a voicemail from FirstPoint on his work phone attempting to collect on the debt.

~~112.103.~~ On or about February 20, 2021, Mr. Cansler again wrote FirstPoint a letter disputing the debt.

~~113.104.~~ On or about May 26, 2021, against Mr. Cansler's written instructions, Mr. Cansler's wife received a call from FirstPoint attempting to collect the debt.

~~114.105.~~ Unfortunately for residents of Eastern North Carolina, Mr. Cansler's experience is typical of patients who receive care from VidantECU Health. Moreover, because VidantECU Health is ~~a regional monopolist,~~ the region's dominant hospital system, most residents of Eastern North Carolina have no choice but to submit to its unreasonable charges and aggressive collection efforts.

G. Additional Facts.

106. ECU Health's chargemaster price for CT scan Cansler received, at \$4,000, was unreasonably high. The partially discounted price of nearly \$3,000 that ECU Health sought to collect from the Plaintiff remained unreasonably high.

107. Blue Cross has not sought to engage in debt collection activities against Mr. Cansler. Only ECU Health has done that.

108. The admission agreement signed by Mr. Cansler is devoid of any reference to "regular rates" or to the hospital's chargemaster price list.

109. ECU Health's chargemaster price list does not list regular rates. Rather, the rates listed in the chargemaster are highly irregular compared to rates that are actually paid.

110. The chargemaster rates are set artificially high as a starting point for negotiations with Blue Cross and other insurers and plans. Neither ECU Health nor Blue Cross contemplates that the chargemaster rates will actually be paid. Chargemaster rates are not regular rates and do not reflect what is paid or what ECU Health expects will be paid.

111. Moreover, because the consent form Mr. Cansler signed merely stated that he would owe ECU Health "all charges," even if he had been provided the chargemaster he would not have known that by agreeing to pay "all charges" ECU would charge he was agreeing to pay the chargemaster or any rate tied to the chargemaster.

112. It does not violate EMTALA for ECU Health to offer a price estimator tool on the hospital system website, which includes price estimates for services like a CT scan that are offered in an emergency department.

113. If a patient waiting in the waiting room of the ECU Health Chowan Hospital today, who had a non-life-threatening issue, sought (e.g., on her smartphone or portable tablet computer) to use the ECU Health price estimator internet tool to understand the cost of her care in the emergency department, such would not violate EMTALA. Nor would it violate EMTALA for an ECU Health employee to assist a patient in that regard.

114. Disclosing prices, as ECU Health now does via its price estimator tool, allows patients to make more informed treatment decisions, but it does not meaningfully affect the level of service offered by ECU Health or ECU Health Chowan Hospital.

115. According to the Healthcare Bluebook² estimator tool, a widely used estimator of fair prices for services by hospital, as of August 2019, fair prices for CT scans included \$472 for abdomen and pelvis CT scan, no contrast, and \$278 for abdominal CT scan, no contrast.

116. The North Carolina State Treasurer has indicated that for privately insured outpatient services generally, of which an outpatient CT scan would be one, a price of 225% of the Medicare price would be fair and reasonable.

117. In 2018, the amount Medicare paid for a similar CT scan at ECU Health Chowan Hospital was \$302. Using the 225% calculation, a reasonable price would be \$679.

118. ECU Health through FirstPoint has demanded that Cansler pay \$2,998.70.

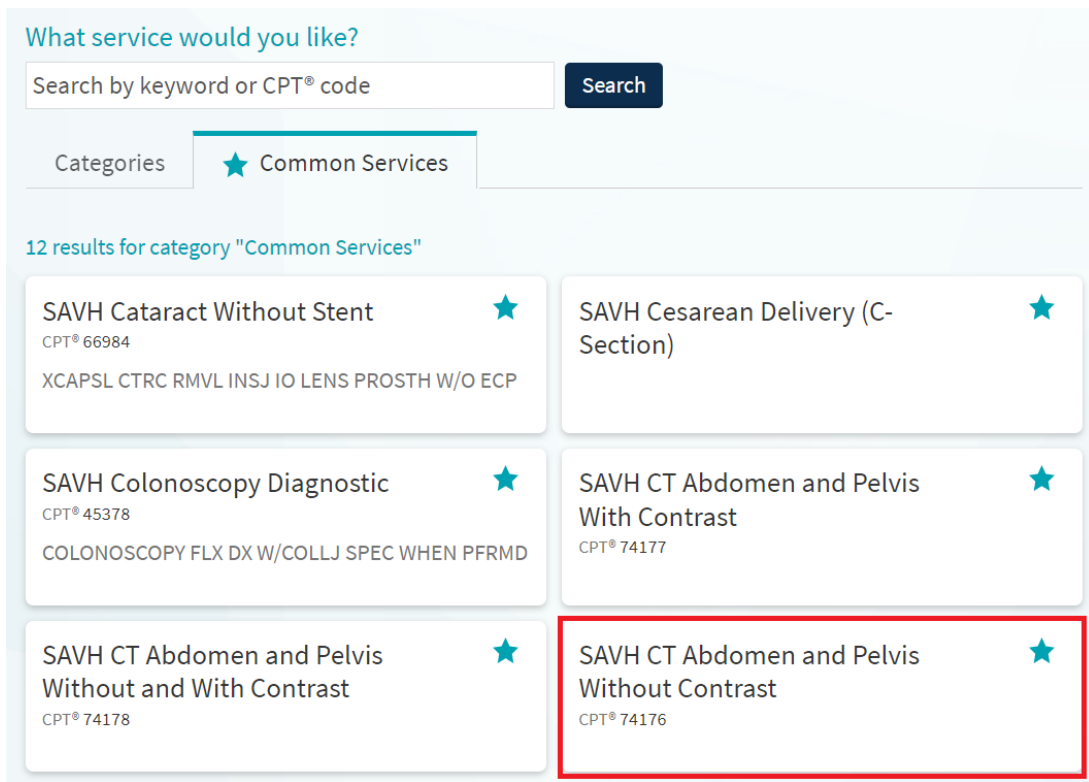
119. Mr. Cansler has paid \$325 to date and Blue Cross has paid \$456 to date. Mr. Cansler's and Blue Cross's payments to ECU Health in the aggregate total \$781.

² <https://www.healthcarebluebook.com/ui/home>

120. ECU Health, by being paid \$781 for the CT scan, has been paid a monetary amount which is \$309 in excess of a reasonable rate as measured by the Healthcare Bluebook rate of \$472, and which is \$102 in excess of a reasonable rate as measured by 225% of the Medicare price.

121. ECU Health has been overpaid on the CT scan provided to Mr. Cansler.

122. The specific type of CT scan Mr. Cansler received was an abdominal/pelvic scan, without contrast. This procedure has a specific CPT code associated with it. The CPT code reflects uniformity in how the procedure is handled as a billed item. On ECU Health's current price calculator tool available on its website,³ the particular category of CT scan that Mr. Cansler received is identified as one of ECU Health's most common procedures. The image below is from the website:



³ <https://mychart.vidanthealth.com/mychart/GuestEstimates>.

123. As can be seen, one of ECU Health’s “common services” consists of the service known as “SAVH CT Abdomen and Pelvis Without Contrast.” Its associated CPT Code is 74176.

It is believed to have been the procedure provided to Mr. Cansler.

124. ECU Health’s chargemaster and the discounted rates tied to the chargemaster for all CT scans at ECU Health Chowan Hospital are similarly unreasonable.

V. CLASS ALLEGATIONS

~~115.125.~~ Plaintiff seeks to represent a class defined as follows:

- a. ~~Vidant~~ECU Health class: All individuals who: visited ~~a Vidant~~the ECU Health Chowan Hospital facility emergency ~~room~~department within the last four years; signed (personally or through an authorized agent) the “Authorization & Consent for Treatment and Assignment of Benefits” or a similar form; received a CT scan ~~or other services~~; and ~~they or their guarantor was/were~~ thereafter billed personally for ~~Vidant’s~~ECU Health’s chargemaster or negotiated rates;
- b. FirstPoint subclass: All members of the ~~Vidant~~ECU Health class who were subjected to debt collection efforts within the last year, including receiving one or more collection letters from FirstPoint regarding their ~~Vidant~~ECU Health bill.

~~116.126.~~ Under Rule 23(a)(1), the class is so numerous that joinder of all members is impracticable. ~~Vidant~~ECU Health facilities including ECU Health Chowan Hospital have provided individuals within the class definition thousands of services within the last four years. ~~There is no indication Mr. Cansler’s billing experience was unusual.~~ CT scans are one of the system’s more commonly used services.

~~117.127.~~ Under Rule 23(a)(2), questions of law or fact common to the class include:

- a. Did Defendant engage in unfair and deceptive billing and collection practices?
- ~~b.~~ Does the “Authorization & Consent for Treatment and Assignment of Benefits” form ~~fail as a contract for lack of a price term, such that there is no enforceable contract among the parties, and under quantum meruit, only a reasonable price is deemed?~~

~~e.b.~~ Alternatively, does the “Authorization & Consent for Treatment and Assignment of Benefits” form contain an open price term, such that under contract law or the doctrine of quantum meruit only a reasonable price is ~~deemed~~ owed to ECU Health?

~~d.~~ Did ~~Vidant~~ ECU Health bill more than the reasonable value of the services for the CT scans that ~~individuals~~ Mr. Cansler and class members received?

~~e.c.~~ Did Vidant bill more than the reasonable value of the services for, and, that other services that individuals class members received?

d. What was a reasonable price for a CT scan for Mr. Cansler and for class members during the pertinent times?

~~f.e.~~ Are patients who paid more than the reasonable value of services for CT scans entitled to disgorgement of amounts they have paid to Defendants over and above the reasonable value of the services?

~~g.f.~~ Are patients who paid more than the reasonable value of services for CT scans entitled to declaratory judgment that they do not owe anything further on the debt and should not be subject to further debt collection efforts?

~~h.g.~~ Did FirstPoint engage in unlawful debt collection efforts with regard to the class members?

~~i.h.~~ Are class members entitled to damages against FirstPoint?

~~118.128.~~ Under Rule 23(a)(3) the claims of the representative parties are typical of the claims of the class. Mr. Cansler received a CT scan ~~and/or other services~~ from a Vidant ECU Health provider; signed a form which was not an enforceable written contract; was billed far above the reasonable value of the service; and by law was only obligated to pay a reasonable amount. Moreover, on information and belief, his experience related to Vidant’s ECU Health’s and FirstPoint’s collection efforts are typical to those of the putative class.

~~119.129.~~ Under Rule 23(a)(4), the representative party will fairly and adequately protect the interests of the class.

~~120.130.~~ Under Rule 23(b)(1), a class action may be maintained because Rule 23(a) is satisfied and prosecuting separate actions by or against individual class members would create a risk of: (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

~~121.131.~~ Further, under Rule 23(b)(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

~~122.132.~~ Further, under Rule 23(b)(3), the questions of law or fact common to class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

~~123.133.~~ In the alternative, the Court should certify an issue class with regard to one or more of the relevant issues that are stated herein. Fed. R. Civ. P. 23(c)(4).

VI. CLAIMS FOR RELIEF

COUNT ONE: VIOLATION OF THE NORTH CAROLINA UNFAIR AND DECEPTIVE TRADE PRACTICES ACT (UDTPA), N.C.G.S. § 75-1.1, *et seq.*

(~~Vidant~~ECU Health Defendants)

~~124.134.~~ All above-alleged paragraphs ~~1 through 123~~ are incorporated by reference.

~~125.135.~~ During the pertinent times, without a valid and enforceable contract with the consumer, ~~Vidant~~ECU Health systematically overcharged private insurance patient healthcare consumers, including Mr. Cansler, for CT scans and other services.

~~126.136.~~ VidantECU Health Defendants attempted to charge Mr. Cansler a price for a CT scan that was far in excess of the amount that any reasonable consumer ought to pay.

~~127.137.~~ The amount for which VidantECU Health Defendants claimed Mr. Cansler was responsible—nearly \$3,000 even after all concessions—was ~~an order of magnitude~~ several times higher than what it should ~~behave been~~.

~~128.138.~~ As part of Vidant's ECU Health's business model, Mr. Cansler was not told of the unconscionably high price until a bill arrived well after his visit to the hospital.

~~129.139.~~ For insured patient consumers, the price for a medical procedure is negotiated between the commercial insurer and VidantECU Health as a percentage of the chargemaster.

~~130.140.~~ Consumers of healthcare services are not informed of the chargemaster rates for their procedures prior to receiving treatment. Indeed, during the relevant period, VidantECU Health had a policy of refusing to disclose prices to patients when patients asked.

~~131.141.~~ Consumers are not informed of the negotiated rates for their procedures prior to receiving treatment and prior to 2021 could not reasonably ascertain those rates themselves.

~~132.142.~~ At all times relevant to this Complaint, VidantECU Health Defendants refused to advise consumers of the cost of their services, and consumers did not and could not discover what Defendants claimed they were owed until well after treatment.

~~133.143.~~ At all times relevant to this Complaint, the admission agreement VidantECU Health Defendants required all patients to sign did not contain any price term ~~and/or any method capable of making the price known. It was not~~ therefore only enforceable for purposes of seeking to enforce collection of a reasonable price.

~~134.144.~~ When consumers are unable to pay ~~Vidant Defendants'~~ECU Health's exorbitant rates, ~~Vidant Defendants~~ECU Health's send bill after bill, demanding payment on such short timelines that bills can arrive after the payment due date.

~~135.145.~~ When consumers are unable to pay the bill or when they dispute the bill, ~~Vidant~~ECU Health Defendants send patients to collections.

~~136.146.~~ ~~Vidant~~ECU Health Defendants and Defendant FirstPoint repeatedly threaten consumers' credit scores.

~~137.147.~~ ~~Vidant~~ECU Health Defendants' conduct during the pertinent times has been unfair and deceptive within the meaning of the UDTPA.

~~138.148.~~ ~~Vidant~~ECU Health Defendants' relevant unfair and deceptive conduct during the pertinent times affected commerce within the meaning of the UDTPA.

149. ~~Vidant~~ECU Health's billing and debt-collection practices underlying this claim are not the rendering of a professional service, because they were not rendered by a physician and because they are not directly related to the rendering of a professional service. Rather, they are a business practice and thus within UDTPA's definition of "commerce."

150. ECU Health could charge a reasonable, transparent price to patients for CT scans without affecting the quantity or quality of service ECU Health provides, because a reasonable price would ensure that ECU Health makes a profit each time it provides the service.

~~139.151.~~ ECU Health Defendants' relevant unfair and deceptive conduct during the pertinent times was a substantial factor in causing injury to the Plaintiff and was a cause of the harm to Plaintiff and class members.

~~140.152.~~ Plaintiff relied to his detriment on ~~Vidant~~ECU Health Defendants' misrepresentations and actionable omission, and but for ~~Vidant~~ECU Health Defendants' unfair and deceptive conduct, Plaintiff would not have been deemed to owe approximately \$3,000.

~~141.153.~~ As a direct and proximate result of ~~Vidant~~ECU Health Defendants' engagement in unfair and deceptive trade practices in and affecting commerce, Plaintiff and the class were damaged.

~~142.154.~~ Accordingly, Plaintiff and class members are entitled to an award of actual and treble damages and attorney's fees and costs.

**COUNT TWO: DECLARATORY AND INJUNCTIVE RELIEF AND RECOVER OF OVERPAYMENT
(~~Vidant~~ECU Health Defendants)**

~~143.155.~~ All above-alleged paragraphs ~~1 through 142~~ are incorporated by reference.

~~144.156.~~ Under the Declaratory Judgment Act, “[i]n a case of actual controversy within its jurisdiction, ... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.” 28 U.S.C. § 2201(a).

~~145.157.~~ Under 28 U.S.C. § 2202, “[f]urther necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.”

~~146.158.~~ Mr. Cansler and class members signed an “Authorization & Consent for Treatment and Assignment of Benefits” or similar consent to treatment forms. These forms did not contain any price term or reference to a price that the patients could read and understand.

~~147.159.~~ Because Mr. Cansler and class members never agreed to pay Defendants' inflated prices, Defendants are entitled only to a reasonable price for the services they provided. This is because the consent form's open price term either (a) rendered any such contract unenforceable, or (b) created an implied-in-fact contract with the price term to be filled in by a court. In either event, the price to which ECU Health is entitled is the reasonable value of the services it provides, under the doctrine of *quantum meruit*.

~~148.160.~~ Mr. Cansler and class members are entitled to a declaratory judgment that they owe Defendants no more than the reasonable price for the medical services they received.

~~149.161.~~ As described herein, an actual controversy has arisen and now exists as to whether Defendants implemented and maintained reasonable billing and hospital bill debt collection procedures and practices.

~~150.162.~~ A judicial determination of this issue is necessary and appropriate at this time under the circumstances to prevent a continuation of improper billing and collection conduct and practices by ~~Vidant~~ECU Health Defendants.

~~151.163.~~ ~~Vidant~~ECU Health Defendants were entitled to no more than the reasonable price for medical services.

~~152.164.~~ The most recently Mr. Cansler and his family were subjected to collection efforts was on May 26, 2021. They have a reasonable concern that they will be subjected to further collection efforts into the future. They have standing to seek a declaratory judgment.

~~153.165.~~ Plaintiff and class members are entitled to a declaratory judgment that ~~Vidant~~ECU Health Defendants are only allowed to undertake to collect the reasonable value of their service and Plaintiff and class members are entitled to disgorgement of overpayments received by the Defendants.

**COUNT THREE: FAIR DEBT COLLECTION PRACTICES ACT (FDCPA),
15 U.S.C. § 1692 *et seq.*
(Defendant FirstPoint)**

~~154.166.~~ All above-alleged paragraphs ~~1 through 153~~ are incorporated by reference.

~~155.167.~~ FirstPoint is a “debt collector” as defined by the FDCPA. 15 U.S.C. § 1692a(6).

~~156.168.~~ Plaintiff is a “consumer” within the meaning of 15 U.S.C. § 1692a(3).

~~157.169.~~ During the pertinent times, Defendant FirstPoint violated the FDCPA by telephoning Plaintiff’s spouse after Defendant received a communication from Plaintiff instructing Defendant not to telephone further. *See* 15 U.S.C. § 1692c(c) & (d); 12 C.F.R. § 1006.6(a)(1); 12 C.F.R. § 1006.14(h)(1).

~~158.170.~~ Defendant FirstPoint violated the FDCPA by telephoning Plaintiff at his place of work after Defendant received a communication from Plaintiff instructing Defendant not to telephone further. *See* 15 U.S.C. § 1692c(c); 12 C.F.R. § 1006.6(b)(3); 12 C.F.R. § 1006.14(h)(1).

~~159.171.~~ The FDCPA prohibits a debt collector from misrepresenting the character, amount, or legal status of any debt. 15 U.S.C. § 1692e(2)(A); 12 C.F.R. § 1006.18(b)(2)(i). During the pertinent times, Defendant FirstPoint violated the FDCPA by seeking to collect on an unlawful and void debt. The FDCPA bars the collection of any amount unless the amount is expressly authorized by the agreement creating the debt or permitted by law. 15 U.S.C. § 1692f(1). Here, there was no legally valid agreement to create the debt.

~~160.172.~~ Due to Defendant FirstPoint’s violations of the FDCPA, under 15 U.S.C. § 1692k Plaintiff is entitled to recover (1) any actual damage sustained by Plaintiff as a result of such violations; (2) such additional damages as the court may allow, but not exceeding \$1,000; (3)

such amount as the Court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or one per centum of the net worth of the debt collector; and (4) the costs of the action, together with a reasonable attorney's fee as determined by the Court.

**COUNT FOUR: NORTH CAROLINA COLLECTION AGENCY ACT (NCCAA),
N.C.G.S. § 58-70-1, et seq.
(Defendant FirstPoint)**

~~161.173.~~ All above-alleged paragraphs ~~1 through 160~~ are incorporated by reference.

~~162.174.~~ FirstPoint is a "collection agency" as defined by the NCCAA, N.C.G.S. §§ 58-70-15 and 58-70-90(1).

~~163.175.~~ Plaintiff is a "consumer" pursuant to N.C.G.S. § 58-70-90(2).

~~164.176.~~ The subject medical bill and purported obligation was a "debt" pursuant to N.C.G.S. § 58-70-90(3).

~~165.177.~~ During the pertinent times, Defendant FirstPoint violated the NCCAA by telephoning Plaintiff at his place of work after Defendant received a communication from Plaintiff instructing Defendant FirstPoint not to contact him further. N.C.G.S. § 58-70-100(4).

~~166.178.~~ During the pertinent times, Defendant FirstPoint violated the NCCAA by seeking to collect on an unlawful and void debt. N.C.G.S. § 58-70-95(8).

~~167.179.~~ Under N.C.G.S. § 58-70-130, as a result of its violation of the NCCAA Defendant FirstPoint is liable for any actual damages sustained by the debtor as a result of the violation and a penalty in such amount as the court may allow between \$500 and \$4000 per violation and attorney's fees and costs.

COUNT FIVE: BREACH OF CONTRACT
(ECU Health Chowan Hospital Defendant)

180. All above-alleged paragraphs are incorporated by reference.

181. During the pertinent times, ECU Health Chowan Hospital and Plaintiff Cansler entered into a contract for medical services including for a CT scan. Likewise, similarly situated class members entered into contracts with ECU Health Chowan Hospital for CT scans.

182. Each contract had no explicit price term or no reference to any method making the price term knowable. Instead, each contract required the patient to pay “all charges” ECU Health Chowan Hospital would later charge.

183. Because the contract had a silent price term, a reasonable price term is implied under North Carolina law. Where a patient receives medical care but does not agree on a price term (or a method of making the price capable of being known), the law implies a promise that the patient will pay the provider the reasonable costs of the services.

184. ECU Health charged in excess of a reasonable price for the CT scan that Plaintiff received on the date in question. ECU Health likewise charged in excess of a reasonable price with regard to CT scans provided to numerous class members. ECU Health was paid, in the aggregate, an amount from the Plaintiff and his plan, an amount that exceeded a reasonable amount. Likewise, ECU Health was paid amounts from class members and their plans that exceeded a reasonable amount.

185. By overcharging the Plaintiff and class members, and by not charging a reasonable price, by seeking aggressive collection actions against Plaintiff and class members, and in many instances by collecting an amount in excess of what the contract allowed, ECU Health Chowan Hospital breached its contract with Plaintiff and class members.

186. As a proximate result of the breach, the Plaintiff and class members were damaged.

187. As a remedy for Defendant's breach of contract, the Plaintiff and class members are entitled to damages measured per the remedy of disgorgement, consisting of a refund or recoupment of the amount of his overpayment.

COUNT SIX: UNJUST ENRICHMENT
(ECU Health Chowan Hospital Defendant)

188. All above-alleged paragraphs are incorporated by reference.

189. This claim is pled in the alternative to Count Five. Because the parties lack an enforceable contract, under principles of quasi-contract, ECU Health Chowan Hospital is only entitled to pursue a recovery in *quantum meruit*, which amounts to payment for the reasonable value of its services.

190. During the pertinent times, the Plaintiff conferred a benefit on the Defendant. Likewise, similarly situated class members conferred benefits on the Defendant. During the pertinent times, Plaintiff and class members conferred a measurable benefit to ECU Health Chowan Hospital, ECU Health Chowan Hospital knowingly and voluntarily accepted the benefit, and the benefit was not given gratuitously.

191. During the pertinent times, Defendant, demanded to be paid, and was paid, benefits in form of monetary payments, from Plaintiff and others similarly situated, in excess of the monetary amounts they owed toward the reasonable value of the CT scan, and caused Plaintiff and class members to confer a monetary benefit on the Defendant in excess of what they would have paid had the reasonable value of the service been applied.⁴

⁴ A hypothetical is provided to reflect how the damages may be calculated: Assume that the reasonable value of the CT scan is \$600. The provider sends the plan and the plaintiff a bill for \$700 for the CT scan. Assume the individual plaintiff has paid \$200 and plan has paid \$500, thereby paying off the bill of \$700. If provider had instead only billed the reasonable value, that is, sent a bill for \$600, and plaintiff and the plan each pay the same relative proportions, then the

192. As a remedy for Defendant's unjust enrichment, the Plaintiff is entitled to the remedy of disgorgement consisting of a refund or recoupment of the amount of his overpayment. Furthermore, similarly situated class members are likewise entitled to refunds.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff respectfully demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter judgment on his behalf as follows:

- A. That Plaintiff and class members are entitled to a determination of liability on each of the claims stated herein;
- B. That under the circumstances any debt purportedly owed by Plaintiff to any of Defendants should be deemed void and unenforceable;
- C. That a class may properly be certified under Rule 23 with the Plaintiff as the class representative and the undersigned counsel as class counsel;
- D. That judgment be entered against Defendants in favor of the Plaintiff and class members;
- E. That the Court enter appropriate declaratory and injunctive relief as to Plaintiff and class members;
- F. That the Court award Plaintiff and class members disgorgement and/or compensatory, actual, statutory and treble damages in an amount to be determined at trial;
- G. That the Court award Plaintiff and class members his and their costs and expenses of suit, and reasonable attorneys' fees as provided by law; and
- H. For such other and further relief as the Court may deem just and proper.

plaintiff would pay \$171 and the plan would pay \$429. Plaintiff's damages in this scenario would be \$29.

This the ~~18th~~11th day of ~~February~~July, 2022.

~~FAIRMARK PARTNERS LLP~~

~~/s/ Jamie Crooks~~
~~Jamie Crooks (admitted *pro hac vice*)~~
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Counsel for ~~Plaintiffs~~Plaintiff and the putative class

CERTIFICATE OF SERVICE

The undersigned hereby shows that by filing this document electronically on July 11, 2022, he caused the electronic ECF filing system to cause electronic service to be effected on all counsel of record.

This the 11th day of July, 2022.

FAIRMARK PARTNERS LLP

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