

to the terms of applicable Services Provider Agreement, (3) the terms of the General Consent for treatment executed by Plaintiff with Wakemed, and (4) North Carolina debt collection laws.

- b. Wakemed breached its duty as attorney-in-fact for Plaintiff by seeking reimbursement from Plaintiff and beyond the contractually agreed amounts due for the medical services provided.
- c. Consequently, Plaintiff and members of the class have suffered damages and are entitled to the relief set forth herein.

PARTIES

- 4. Plaintiff M. P. Southern is a citizen and resident of Wake County, North Carolina and he appears herein in his individual capacity and as a representative of the Class more fully set forth herein.
- 5. Upon information and belief, Defendant WakeMed (“WakeMed”) is a North Carolina corporation headquartered and with its principal place of business in Wake County, North Carolina.

JURISDICTION AND VENUE

- 6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 2201, 28 U.S.C. § 1331, and 29 U.S.C. § 1132(e)(1)..
- 7. Venue is proper in this Court under 29 U.S.C. § 1132(e)(2) and 28 U.S.C. § 1391(b)(2).

FACTUAL ALLEGATIONS

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

9. Following the accident, Plaintiff was transported by emergency medical services to Defendant's hospital facility commonly known as WakeMed North Healthplex located at or near 10000 Falls of Neuse Road, Raleigh, North Carolina (hereinafter "WakeMed North").
10. Upon information and belief, Defendant Wakemed is the owner and/or operator of the Wakemed North facility.
11. Plaintiff received treatment at WakeMed North on October 6, 2012 for his injuries sustained in the above referenced accident. Plaintiff incurred medical costs and expenses with various health care providers including, but not limited to, Defendant.
12. As of October 6, 2012, Plaintiff was a Member and beneficiary of an employee welfare benefit health plan pursuant to 29 U.S.C. § 1002(1) that is administered in Forsyth County, North Carolina.
13. At the time of Plaintiff's admission to Wakemed North, Plaintiff presented to Wakemed documentation indicating that Plaintiff was a member of a health insurance plan administered, maintained or serviced by BCBSNC ("Evidence of Coverage").
14. In conjunction with the medical care provided to Plaintiff at WakeMed North, Defendant requested that Plaintiff pay a \$150.00 co-pay under his health plan and Evidence of Coverage and Plaintiff paid and Defendant accepted the payment of the Plaintiff's \$150.00 co-pay under his health plan and Evidence of Coverage.
15. Subsequent to Plaintiff's medical care at WakeMed North, Defendant generated a bill indicating charges for the medical care totaling \$8,234.73.
16. At the time of treatment at Wakemed North, Wakemed presented Plaintiff with a form titled "General Consent" which Plaintiff signed as requested by Wakemed.

17. The General Consent form signed by Plaintiff made Wakemed an attorney-in-fact for Plaintiff regarding the collection of benefits from third-parties for Plaintiff's medical expenses.
18. Upon information and belief, the General Consent form signed by Plaintiff is commonly signed by patients seeking and receiving treatment at Defendant's medical facilities including members of the Class.
19. Upon information and belief, at all times relevant, Wakemed and BCBSNC had entered into agreement(s) for the purpose of providing, *inter alia*, medical care to members of BCBSNC including Plaintiff and members of the Class (hereinafter "Services Provider Agreement(s)").
20. At all times relevant, Wakemed represented to Plaintiff and members of the Class that Wakemed maintained the Services Provider Agreement(s) with BCBSNC for the benefit of individuals who were members of BCBSNC including Plaintiff and members of the Class and that Wakemed was an in-network provider for BCBSNC.
21. At all times relevant, Wakemed represented that members of BCBSNC, including Plaintiff and members of the Class, would have access to Wakemed's health care system on the terms of Wakemed's Services Provider Agreement(s) with BCBSNC and offered to treat Plaintiff and members of the Class on this basis.
22. At the time of Plaintiff's treatment at Wakemed North, Plaintiff accepted Wakemed's Offer to treat Plaintiff on an in-network basis and in accordance with the Services Provider Agreement(s).
23. Pursuant to the terms contained in the General Consent form and the Offer, Wakemed agreed to only collect insurance benefits from BCBSNC for Plaintiff's medical care at

Wakemed and Wakemed further agreed to refund to Plaintiff any overpayments received by Wakemed from any payment source.

24. Upon information and belief, the Services Provider Agreement establishes the payment terms and payment rates for medical care and services provided by Wakemed to members of BCBSNC, including Plaintiff and members of the Class, and that such terms and rates are agreed to by Wakemed as part of the Services Provider Agreement(s) and as part of the Offer to treat Plaintiff and members of the Class on an in-network basis.
25. Plaintiff and members of the Class are intended third-party beneficiaries of the Services Provider Agreement(s) and are the intended and protected beneficiaries of the regulatory scheme authorizing these contracts.
26. Plaintiff and certain members of the Class are entitled to the terms and rates agreed to by Wakemed as part of the Services Provider Agreement(s) as a result of the General Consent, the Offer, and otherwise.
27. The terms of the Services Provider Agreement(s) are incorporated by reference, implication and/or reliance upon Defendant Wakemed's representations regarding its status as a BCBSNC in-network provider, into the General Consent executed by Plaintiff and members of the Class and into the Offer.
28. Plaintiff and certain members of the Class are entitled to the terms and rates agreed to by Wakemed as part of the Services Provider Agreement regardless of the source of payment for the incurred medical expenses.
29. The General Consent form and the Offer created an obligation for Defendant Wakemed to provide medical care to Plaintiff in exchange for payment only in the following two ways: (1) by Plaintiff for co-payments, coinsurance and/or deductibles and (2) payment

by Plaintiff's health insurer BCBSNC pursuant to the terms as set forth in the Services Provider Agreement.

30. Pursuant to the Evidence of Coverage and the Services Provider Agreement, the terms of the General Consent, and/or the Defendant's Offer to treat Plaintiff as an in-network Provider which was accepted by Plaintiff, Plaintiff was personally obligated to make a co-payment of only \$150.00 to Wakemed for Plaintiff's medical treatment on October 6, 2012 and Plaintiff made this payment to Wakemed on or about October 6, 2012.
31. At no time prior to or during Plaintiff's visit to Wakemed did Wakemed provide specific written notification to Plaintiff that Plaintiff may be held financially responsible for particular services not covered by BCBSNC or for any amounts in excess of the applicable \$150.00 co-payment amount.
32. At no time prior to or during Plaintiff's visit to Wakemed North did Wakemed provide to Plaintiff any written notification that, despite Plaintiff being a member of BCBSNC, Plaintiff would be responsible for the full amount of Plaintiff's medical charges and that Plaintiff may not be entitled to the benefit of the terms established by Defendant Wakemed's advertised Offer to treat patients, including Plaintiff, as an in-network Preferred Provider for BCBSNC and in accordance with the Services Provider Agreement(s), including the rates established by such agreement(s), and that Plaintiff may not be entitled to the limitation of his individual liability to Wakemed to \$150.00 for the co-pay under the circumstances of this case.
33. At no time prior to or during Plaintiff's visit to Wakemed North did Defendant Wakemed provide to Plaintiff any written or other notification that, despite Plaintiff being a member

of BCBSNC, Wakemed would seek or collect payment from Plaintiff or any source other than BCBSNC for Plaintiff's medical treatment.

34. Upon information and belief, on or about October 19, 2012, Defendant received and accepted payment in full in the amount of \$3,761.48 from BCBSNC for the above described medical care and services provided to Plaintiff.
35. Upon information and belief, the payment made by BCBSNC on or about October 19, 2012 in the amount of \$3,761.48 represented payment pursuant to the terms and rates as set forth in the Services Provider Agreement(s).
36. Upon information and belief, pursuant to the Services Provides Agreement(s) and Defendant's Offer to treat Plaintiff as a Preferred Provider which was accepted by Plaintiff, the payment to Defendant by BCBSNC on or about October 19, 2012, in addition to Plaintiff's payment of the \$150.00 co-payment, constituted payment in full on the account of Plaintiff for the above described medical care and services.
37. Upon information and belief, on or about January 14, 2013, Defendant received a check in the amount of \$5,000.00 from Liberty Mutual, the automobile insurer for Plaintiff for which Plaintiff paid premiums for coverage, representing payment of the Medical Payments coverage part of the Plaintiff's automobile insurance policy.
38. At the time of the payment by Liberty Mutual, Defendant had been paid in full by BCBSNC and by Plaintiff for medical care and services provided to Plaintiff on October 6, 2012.
39. Upon information and belief, at some time after January 14, 2013, Defendant refunded or returned to BCBSNC the \$3,761.48 payment made by BCBSNC on the Plaintiff's account.

24. Since January 14, 2013, Defendant has not refunded to Plaintiff any portion of the \$150.00 co-payment paid by Plaintiff on or about October 6, 2012. Defendant has not refunded to Plaintiff any portion of the \$5,000.00 payment made to Defendant by Liberty Mutual as a benefit to Plaintiff under Plaintiff's automobile insurance policy and has retained the funds for its own benefit and use despite the fact that Defendant is only entitled to payment for Plaintiff's medical care and services in two ways: (1) by Plaintiff for co-payments, coinsurance and/or deductibles and (2) payment by Plaintiff's health insurer BCBSNC pursuant to the terms and rates as set forth in the applicable health plan and the Services Provider Agreement(s).
40. On or about May 15, 2013 and on or about June 17, 2013, Defendant sent collection notices to Plaintiff requesting payment from Plaintiff in the amount of \$3,084.73 and further stating, *inter alia*, that "there is a remaining balance on your account after all health insurance information provided by you at the time of service was processed. If you did not have health insurance coverage at the time of service, the balance is your responsibility."
41. The collection notices sent by Defendant on May 15, 2013 and June 17, 2013 constitute misleading misstatements of fact and misrepresent the extent to which Plaintiff's health insurance was processed by Defendant. Furthermore, the collection notices misstated the status of Plaintiff's accounts with regard to the amount owed by Plaintiff to Defendant.
42. As a result of Wakemed's actions as set forth herein, Plaintiff has been damaged and Wakemed has been correspondingly benefitted.
43. Upon information and belief, Defendant Wakemed has collected or unjustly received payments for medical care and services in amounts that exceed co-payment, coinsurance

and/or deductible obligations for numerous other patients, the identity of whom is presently unknown to Plaintiff, who have received treatment at Wakemed's medical facilities and who are also members of BCBSNC who Wakemed agreed to treat in exchange for the in-network benefits described in the applicable Services Provider Agreement(s) and who, as a result, are only obligated to make payment to Wakemed for co-payments, coinsurance and deductibles, pursuant to the Services Provider Agreement, Wakemed's unilateral Offer to treat such patients as an in-network provider which was accepted by such patients, and the General Consent, thus causing damage unto said persons and benefiting Wakemed.

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

CLASS ACTION ALLEGATIONS

45. This action is brought by Plaintiff as representative of all others similarly situated under the provisions of Rule 23(a) of the Federal Rules of Civil Procedure for damages and other relief including court costs and attorneys' fees as set forth in more detail below.
46. The "Class" represented by Plaintiff in this action, consists of all persons who received medical treatment at Wakemed's medical facilities and who either 1) were forced to pay, had paid on their behalf, or are being asked to make payment for charges for medical care and services in an amount that violates the General Consent and/or exceeds the co-payment, coinsurance and/or deductible obligation for said persons and/or the terms of

the Services Provider Agreement(s) and Wakemed's Offer to treat such persons as an in-network provider pursuant to such agreements, or 2) did not receive the benefit of collection by Wakemed as an attorney-in-fact of payment for medical services from a source or sources most favorable to the client among the sources known to Wakemed acting as an attorney-in-fact, or 3) were not refunded amounts received by Wakemed in excess of amounts due for medical care and services provided by Wakemed to said persons, or 4) were sent collection notices that contained misleading statements of fact and misrepresentations regarding their accounts with Wakemed.

47. Excluded from the class are Wakemed, any entity in which Wakemed has controlling interest, any employees, officers or directors of the Wakemed, the legal representatives, heirs, successors, and assigns of Wakemed, any judge or employee of the Court assigned to work on this lawsuit, and Plaintiff's attorneys and staff.
48. Common issues of law and fact predominate with respect to the issues raised herein. Common issues of law and fact include: a) the agreed upon rates and fees set forth in the Services Provider Agreement(s) and the terms thereof, b) the policy and practice of Wakemed in seeking collection of amounts in excess of the agreed upon rates and fees, c) the policy and practice of Wakemed in seeking collection as an attorney-in-fact from sources more favorable to Wakemed but less favorable to Plaintiff and the Class, d) the policy and practice of Wakemed seeking collection from Plaintiff and members of the Class of amounts in excess of the amount due and owing for medical services rendered under applicable agreements including the Services Provider Agreement, e) the extent to which Wakemed has violated the North Carolina Fair Debt Collection Act, f) applicability and application of the North Carolina Unfair and Deceptive Trade Practices

Act, g) the appropriateness of punitive damages including the appropriate amount of such damages, and h) whether Wakemed's actions violated 29 U.S.C. § 1132(a)(3).

49. The claims of the representative Plaintiff are typical of the claims of the members of the Class. The claims of all members of the Class, including the Plaintiff, depend on the showing that the acts and omissions of the Wakemed gave rise to the rights of the Plaintiff to the relief sought herein and in showing that the damages were caused by said acts and omissions of the Wakemed. There is no conflict between the Plaintiff and any members of the class with respect to this action or all of the claims for relief herein set forth.
50. Plaintiff will fairly and adequately protect the interests of the Class which he represents. The interests of the Plaintiff are consistent with those of the Class members.
51. Plaintiff is represented by experienced and able counsel who has expertise in the areas of tort law, trial practice, and class action representation.
52. The class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Because of the number and nature of common questions of fact and law, multiple separate lawsuits would not serve the interest of judicial economy.

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

53. Plaintiff incorporates by reference the allegations set forth above.
54. Plaintiff and members of the Class are members of BCBSNC.

55. Upon information and belief, at all times relevant, BCBSNC and Defendant were parties to an agreement, or series of agreements, identified herein as a Services Provider Agreement(s).
56. Plaintiff and members of the Class are intended third-party beneficiaries of the Services Provider Agreement(s).
57. Defendant Wakemed did breach the terms of the Services Provider Agreement(s) proximately causing damage unto Plaintiff and members of the Class by charging and collecting amounts for medical care and treatment that exceed the rates and fees established by the Services Provider Agreement(s).

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

58. Plaintiff incorporates by reference the allegations set forth above.
59. Pursuant to the terms of the General Consent, Wakemed agreed to seek collection of benefits from any responsible third-party such as BCBSNC for the cost of medical care provided to Plaintiff and members of the Class and to not seek collection from Plaintiff and members of the Class.
60. Pursuant to the terms of the General Consent, Wakemed agreed to refund to Plaintiff and members of the Class any amounts received by Wakemed in excess of amounts owed by Plaintiff and members of the Class.
61. On October 6, 2012, as requested by Defendant, Plaintiff paid Defendant a \$150.00 co-payment as required under his health plan and as requested by Defendant thus fulfilling Plaintiff's full obligations for payment to Defendant.
62. Upon information and belief, on or about January 14, 2013, Defendant received a check in the amount of \$5,000.00 from Liberty Mutual, the automobile insurer for Plaintiff for

which Plaintiff paid premiums for coverage, representing payment of the Medical Payments coverage part of the Plaintiff's automobile insurance policy.

63. Wakemed has refused to refund any portion of the amounts paid by Liberty Mutual and, therefore, has breached the terms of the General Consent.
64. As a result of Defendant's actions as set forth herein, Plaintiff has been damaged and Wakemed has been correspondingly benefitted.
65. Wakemed breached the terms of the General Consent in such a manner as to constitute a breach of contract by demanding and collecting for the costs of Plaintiff's medical care directly from the Plaintiff and by failing to refund to Plaintiff amounts paid in excess of the agreed upon costs of Plaintiff's medical care pursuant to the terms of the General Consent.
66. Upon information and belief, in similar fashion to Plaintiff, Wakemed has breached the terms of the General Consent with respect to members of the Class.
67. As direct and proximate result of Wakemed's breach of contract, Plaintiff and members of the Class have incurred damages as more fully set forth herein.

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

68. Plaintiff incorporates by reference the allegations set forth above.
69. At all times relevant, Waked offered to provide treatment to Plaintiff and members of the Class as an in-network provider of BCBSNC and in accordance with the terms of Wakemed's contracts with BCBSNC including specifically the Services Provider Agreement(s).
70. Plaintiff and members of the Class accepted Wakemed's Offer for treatment at Wakemed as an in-network provider.

71. As a result of Wakemed's representations as an in-network provider for BCBSNC and its offer to treat as an in-network provider, Plaintiff and members of the Class are entitled to treatment pursuant to the terms of the Services Provider Agreement.
72. Wakemed has breached its contract with Plaintiff and members of the Class by failing to treat Plaintiff and members of the Class as an in-network provider and in accordance with the Services Provider Agreement(s) as more fully described herein.
73. As a direct and proximate result of Wakemed's breach of contract, Plaintiff and members of the Class have incurred damages as more fully set forth herein.

FOURTH CLAIM FOR RELIEF - UNFAIR AND DECEPTIVE TRADE PRACTICES

74. Plaintiff incorporates by reference the allegations set forth above.
75. The collection of expenses for medical care provided to patients, including Plaintiff and members of the Class, is a practice which is "in or affecting commerce" and, as such, falls within the purview of N.C.G.S. § 75-1.1.
76. Wakemed's conduct as described herein constitutes unfair and deceptive trade practices in that Wakemed:
 - a. Communicated false information to Plaintiff's and members of the Class regarding the amount of charges owed for medical care and services provided by Wakemed; and
 - b. Wrongfully, deceptively, and improperly charged Plaintiff and members of the Class amounts for medical care and treatment that exceeded the amounts allowed pursuant to the Services Provider Agreement(s) and further failed to refund

amounts received in excess of the amounts allowed pursuant to the Services Provider Agreement as required pursuant to the General Consent.

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

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

78. Plaintiff incorporates by reference the allegations set forth above.
79. As a result of the relationship between Wakemed and Plaintiff, and members of the Class, including Wakemed's role as an attorney-in-fact, Defendant owes Plaintiff and the class fiduciary duties.
80. Among the fiduciary duties owed by Wakemed to Plaintiff and members of the Class is the duty to act on Plaintiff's behalf and in Plaintiff's best interests in seeking payment from available sources for medical services provided to Plaintiff and members of the Class.
81. Wakemed did breach its fiduciary duties by, among other things, communicating false information to Plaintiff and members of the Class regarding the amount of charges owed for medical care and services provided by Wakemed, wrongfully, deceptively, and improperly charging Plaintiff and members of the Class amounts for medical care and treatment that exceeded the amounts allowed pursuant to the Services Provider Agreement(s), failing to refund amounts received in excess of the amounts allowed pursuant to the Services Provider Agreement(s), pursuing collection policies and

practices which put Wakemed's financial interests ahead of Plaintiff's and those of the Class, failing to pursue collection from sources favorable to Plaintiff and members of the Class, and altering and modifying its billings and charges to enable collections from source more favorable to Wakemed but less favorable to Plaintiff than otherwise were available.

82. Wakemed did breach its fiduciary duties owed to Plaintiff and members of the Class in a manner that sought to benefit Wakemed and did in fact benefit Wakemed.
83. Wakemed's breach of fiduciary duties owed to Plaintiff and members of the Class proximately caused damages to Plaintiff and members of the Class as more fully set forth herein and such breach constitutes a constructive fraud.

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

84. Plaintiff incorporates by reference the allegations set forth above.
85. Plaintiff and members of the Class are consumers pursuant to N.C.G.S. § 75.50(1).
86. Wakemed is a debt collectors within the meaning of N.C.G.S. § 75.50(3).
87. Wakemed's actions as more fully described herein constitute the acts of a debt collector pursuant to Chapter 75, Article 2 of the North Carolina General Statutes.
88. Wakemed did violate Chapter 75, Article 2, specifically N.C.G.S. § 75-54(4), by sending collection notices that contained misleading misstatements of fact and misrepresentations regarding the patient accounts with Wakemed.
89. Wakemed did violate Chapter 75, Article 2, specifically N.C.G.S. § 75-54(4), by sending collection letters to Plaintiff in violation of N.C.G.S. § 131E-91(c).

90. As a direct and proximate result of Wakemed's violation of Article 2, Chapter 75 of the North Carolina General Statutes, Plaintiff, and members of the Class, have suffered damages as described above and herein and are entitled to damages plus civil penalties as set forth in N.C.G.S. § 75-56 including, but not limited to, an amount not less than \$500.00 nor greater than \$4,000.00 for each violation by Wakemed plus attorneys' fees and costs as allowed by law.

EIGHTH CLAIM FOR RELIEF – CONVERSION

91. Plaintiff incorporates by reference the allegations set forth above.
92. Wakemed has in their possession or has converted to their use funds due, owing and belonging to Plaintiff and members of the Class.
93. The possession of the funds due, owing and belonging to Plaintiff and members of the Class is wrongful and constitutes conversion under North Carolina law.
94. As a direct and proximate result of Wakemed's conversion of funds due, owing and belonging to Plaintiff and members of the Class, Plaintiff and the members of the Class have suffered damages as more fully set forth herein.

**NINTH CLAIM FOR RELIEF – VIOLATION OF
N.C.G.S. § 131E-91(b) and/or N.C.G.S. § 131E-91(c)**

95. Plaintiff incorporates by reference the allegations set forth above.
96. Wakemed's actions as more fully described herein constitute a violation of N.C.G.S. § 131E-91(b) and/or N.C.G.S. § 131E-91(c).
97. As a direct and proximate result of Wakemed's violation of N.C.G.S. § 131E-91(b) and/or N.C.G.S. § 131E-91(c), Plaintiff, and members of the Class, have suffered damages as described above and herein.

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

98. Plaintiff incorporates by reference the allegations set forth above.
99. The Employment Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq. (“ERISA”), protects the rights of employees’ and their beneficiaries to their benefits, providing an avenue for the recovery of benefits due and to redress breaches of fiduciary duties arising from qualified plans.
100. At all times relevant, Plaintiff was a Member and beneficiary of an employee welfare benefit plan pursuant to 29 U.S.C. 1002(1).
101. Wakemed has violated 29 U.S.C. § 1132(a)(3) (ERISA § 502(a)(3)) by acting in one or more of the following ways:
- a. By violating the terms of the Services Provider Agreement(s) by charging and collecting amounts for medical care and treatment that exceed the rates and fees established by the Services Provider Agreement(s) and other applicable agreements including Plaintiffs employee welfare benefit plan;
 - b. By violating the terms of the General Consent by seeking collection for Plaintiff’s medical care directly from Plaintiff and members of the Class;
 - c. By refusing to treat Plaintiff and members of the Class in accordance with Wakemed’s representation that Plaintiff and members of the Class would receive care on an in-network basis thus limiting the financial obligation of Plaintiff and Members of the Class to pay for such care to the payment of co-payments, deductibles and coinsurance.

- d. By refusing to refund to Plaintiff and members of the Class amounts received in excess of the payment obligations of Plaintiff and members of the Class under the terms of the applicable ERISA qualified plan.
102. As a direct and proximate result of Wakemed's acts and omissions as more fully alleged herein and Wakemed's violation of 29 U.S.C. § 1132(a)(3), Plaintiff and members of the Class are entitled to equitable relief including but not limited to:
- a. Restitution of all funds obtained by Wakemed that belong to Plaintiff and members of the Class;
 - b. An accounting of all funds obtained by Wakemed that belong to Plaintiff and members of the Class;
 - c. Disgorgement of all funds, profits and earnings obtained by Wakemed as a result of their conduct;
 - d. A constructive trust as to all funds obtained by Wakemed that belong to Plaintiff and members of the Class.
103. Plaintiff and members of the Class are also entitled to an award of prejudgment and post-judgment interest, attorneys' fees and costs pursuant to 29 U.S.C. § 1132(g)(1).

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

104. Plaintiff incorporates by reference the allegations set forth above.
105. Pursuant to 28 U.S.C. § 2201, Plaintiff seeks a declaration of his rights under the employee benefits plan described above and all terms and benefits provided by such plan to the full extent interpretation or determination of the meaning of the terms of the plan or the benefits provided under the plan is necessary to determine Plaintiff's rights and

Wakemed's obligations under the terms of the state law contracts and other state law causes of action alleged herein.

WHEREFORE, Plaintiff prays the Court as follows:

1. That after due proceedings, this action be certified as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure with the Court appointing the above named Plaintiff as the representative of the Class and the undersigned counsel as counsel for the Class;
2. That in due course, this action proceed as a class action, pursuant to the above named provisions, to judgment as therein provided in favor of Plaintiff, and the class Plaintiff represents, and against Defendant;
3. That Plaintiff, and the class Plaintiff represents, have and recover damages of the Defendant pursuant to the claims for relief set out in this Complaint;
4. That Plaintiff, and the class Plaintiff represents, have injunctive relief against Defendant as set forth in the Complaint;
5. That Plaintiff, and the class Plaintiff represents, have and recover prejudgment and post judgment interest at the maximum legal rate;
6. That the Plaintiff, and the class Plaintiff represents, have and recover attorneys' fees as allowed by law;
7. That the Plaintiff, and the class Plaintiff represents, have and recover the costs of this action as allowed by law; and
8. For such other and further relief as the Court deems just and proper.

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

This the 13th day of January, 2016.

/s/ J. Michael Malone

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Counsel for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

M.P. Southern on behalf of himself and all others similarly situated

(b) County of Residence of First Listed Plaintiff Wake
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

J. Michael Malone (and Robert E. Fields of Oak City Law, LLP)
Hendren & Malone
4600 Marriott Drive, Suite 150, Raleigh, NC 27612; 919-573-1423

DEFENDANTS

Wakemed

County of Residence of First Listed Defendant Wake
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 2201, 28 U.S.C. 1331, 29 U.S.C. 1132(e)(1)
Brief description of cause:
Breach of contract and ERISA claims relating to billing for medical care.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER 15-cv-827

DATE: 01/13/2016 SIGNATURE OF ATTORNEY OF RECORD: /s/ J. Michael Malone

FOR OFFICE USE ONLY

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Civil Action No. 16-cv-17

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: