

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Dana Michelle Edwards on behalf of)	
herself and others similarly situated,)	Civil Action No.
)	
Plaintiff,)	
)	
vs.)	
)	
Key Health Medical Solutions, Inc., VBS)	
Physical Therapists, Inc., and John Doe)	
##1-100,)	
)	
Defendants.)	

**NOTICE OF REMOVAL OF
KEY HEALTH MEDICAL
SOLUTIONS, INC.**

YOU ARE HEREBY NOTIFIED that, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Key Health Medical Solutions, Inc. (“Key Health”) hereby removes this case from the South Carolina Court of Common Pleas for the Thirteenth Judicial Circuit to the United States District Court for the District of South Carolina, Greenville Division. Key Health denies the Complaint’s allegations and files this Notice without waiving any defenses, exceptions, or obligations existing in its favor in either state or federal court.

I. STATEMENT OF COMMENCEMENT OF ACTION

The above-captioned action was commenced by Plaintiff Dana Edwards (“Edwards” or “Plaintiff”) by the filing of a Summons and Complaint with the Clerk of Court for Greenville County, South Carolina on September 1, 2020 with service upon Key Health *via* certified mail on September 25, 2020. This Notice of Removal is being filed pursuant to 28 U.S.C. § 1441 within thirty days after service on Key Health and is therefore removable pursuant to 28 U.S.C. § 1446(a)-(b). *See* FRCP 6(a)(2)-(3)(Exclude last day for calculation if falling on Saturday, Sunday, or legal holiday); FRCP 6(d) (Add three days for calculation if served by certified mail); *Branch ex rel.*

Branch v. Coca-Cola Bottling Co. Consol., 83 F.Supp.2d 631, FN1 (D.S.C. 2000); *Bowman v. Weeks Marine, Inc.*, 936 F.Supp. 329, 343 (D.S.C. Aug. 21, 1996).

II. PLEADINGS AND NOTICE TO STATE COURT

True and correct copies of the Summons and Complaint, and Affidavit of Service with respect to this action are attached as **Exhibit A** and are being filed along with this Notice of Removal. Pursuant to the provisions of 28 U.S.C. § 1446(d), Key Health will promptly file a copy of this Notice of Removal with the Clerk of Court for the Court of Common Pleas for Greenville County, South Carolina. Written notice of this removal is being provided to Plaintiff through her attorney and the Greenville County Court of Common Pleas.

III. STATEMENT OF STATUTORY BASIS FOR FEDERAL JURISDICTION

This action is within the original jurisdiction of the United States District Court pursuant to 28 U.S.C. § 1332. This statute provides, in pertinent part, that “[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States.” 28 U.S.C. § 1332(a)(1). Here, as explained below, complete diversity of citizenship exists and Plaintiff’s allegations satisfy the amount in controversy requirement. The Greenville Division of this Court is the proper court for removal because Edwards filed the state court action in Greenville County, South Carolina. 28 U.S.C. § 1446(a).

IV. DIVERSITY JURISDICTION

A. Citizenship of the Parties.

Complete diversity supports Key Health’s removal of this action:

1. Complete Diversity of Citizenship Exists Between Edwards and Key Health.

Complete diversity of citizenship exists between Dana Edwards and Key Health in support of diversity jurisdiction. As alleged in her Complaint, Edwards “is a citizen and resident of the County of Greenville, State of South Carolina.” (Compl. ¶ 1.) As to Key Health, Edwards correctly alleges: “Key Health Medical Solutions, Inc. is a corporation organized and existing under the laws of the State of California...” (*Id.* at ¶ 2; *see also Exhibit B.*) Complete diversity of citizenship, therefore, exists as between Key Health and Edwards. And, discussed below, as the sole properly served and joined Defendant, only Key Health’s citizenship matters for determining complete citizenship under 28 U.S.C. §1332.

Apart from Key Health, the other Defendants who Plaintiff named in the caption of her Complaint include: John Doe #1-100 (treated collectively as “Doe Defendants”) and VBS Physical Therapists, Inc. (“VBS”). (Compl. ¶¶3-4.) Key Health addresses those Defendants in turn:

2. **As Unserved, Un-Joined Fictitious Defendants, the Doe Defendants Do Not Impact Complete Diversity.**

Plaintiff’s naming of the Doe Defendants does not impact the complete diversity supportive of Key Health’s removal of this matter. As an initial matter, Key Health notes Plaintiff failed to allege the Doe Defendants’ citizenship. (Compl. ¶5.) But, even if Edwards had included such allegations, it would not impact the existence of diversity jurisdiction.

28 U.S.C. § 1441(b) expressly states: “In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.” *See also Smalls v. Wal-Mart Stores East, LP*, 2020 WL 3167616, at *2 (D.S.C. 2020). Thus, the Doe Defendants’ citizenship cannot be considered for purposes of diversity jurisdiction analysis.

That said, even if she had listed them by name, Edwards failed to assert any claims against the Doe Defendants for which the Court could grant relief to her. Under such circumstances,

District Courts in South Carolina do not consider the citizenship of such Defendants when evaluating the existence of diversity jurisdiction. *Hartley v. CSX Transp., Inc.*, 187 F.3d 422, 424 (4th Cir. 1999); *Hudson v. New Idea Corp.*, No. 5:15-CV-04314-JMC, 2016 WL 1693306, at *3 (D.S.C. Apr. 28, 2016) (District Court disregards those defendants where “no possibility” exists she “would be able to establish a cause of action against” them in state court.)¹ Last, the Doe Defendants are not otherwise properly joined and served as required by 28 U.S.C. § 1441(b)(2). Accordingly, the Doe Defendants do not impact complete diversity jurisdiction in this case.

3. As an Unserved, Un-joined Entity, Not Existing Under South Carolina Law (As Alleged), VBS Does Not Impact the Existence of Complete Diversity.

Plaintiff’s purported naming of VBS Physical Therapy, Inc. similarly does not impact complete diversity of citizenship for purposes of invoking diversity jurisdiction in this matter. As to VBS, Edwards has alleged: “Upon information and belief, VBS Physical Therapy, Inc. is a corporation organized and existing under the laws of the State of South Carolina...” (*Id.* at ¶3.) Yet, according to the South Carolina Secretary of State’s website, Plaintiff’s allegation, in this regard, proves incorrect. No corporation is incorporated under South Carolina law and exists as: “VBS Physical Therapy, Inc.” (*See Exhibit C.*)

Plaintiff could not, did not, and will never be able to properly join and serve a South Carolina corporation named VBS Physical Therapy, Inc. in this case. Consistent with the same and as a matter of public record (of which Key Health requests the Court take judicial notice under FRE 201), Edwards has likewise not filed an affidavit of service for VBS in state court as required

¹ Plaintiff does not assert the John Doe Defendants provided her care or that she entered into any agreement with the John Doe Defendants. Edwards nowhere asserts the John Doe Defendants hurt her in any manner. Even if she had alleged claims against them, Edwards lacks standing to assert claims against the John Doe Defendants.

by SCRCP 4(g).² And, Plaintiff's use of the name VBS Physical Therapy, Inc. seemingly also triggers the same analysis applicable to the John Doe Defendants. 28 U.S.C. § 1441(b); *Smalls*, 2020 WL 3167616, at *2. For the foregoing reasons, complete diversity exists in this case.

B. The Amount in Controversy Exceeds \$75,000 Exclusive of Interest and Costs.

Edwards' assertions satisfy the jurisdictional amount in controversy needed to invoke diversity jurisdiction. A defendant satisfies the jurisdictional amount in controversy when it can demonstrate within a reasonable probability the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a); *Brooks v. GAF Materials Corp.*, 532 F. Supp. 2d 779, 781-82 (D.S.C. 2008). Here, Edwards asserts twelve (12) claims on behalf of herself and purportedly on behalf of a class of similarly situated individuals.³

In both her individual and representative capacity, Edwards seeks the following relief: (1) reformation of all of Key Health's contracts as related to Edwards and the purported class members; (2) class-wide injunctive relief; (3) actual damages including non-economic damages; (4) relief impacting Key Health's ability to conduct future business; (5) contractual damages including consequential and incidental damages; (6) attorney's fees; (7) all penalties allowable by S.C. Code § 37-1-101 *et seq.*; (8) all penalties allowable by S.C. Code § 37-2-101 *et seq.*; (9) punitive damages; (10) treble damages under the South Carolina Unfair Trade Practices Act; and

² See, e.g.:

<https://www2.greenvillecounty.org/SCJD/PublicIndex/CaseDetails.aspx?County=23&CourtAgency=23002&Casenum=2020CP2304048&CaseType=V&HKey=8972865511611748897177100114726650804988117895375976883791081225751731161078985845750829076113119>

³ Those claims include: (1) violation of the S.C. Consumer Protection Code Credit Sales Act (Compl. p. 14); (2) fraud (*id.* at 15); (3) constructive fraud (*id.* at 16); (4) breach of contract (*id.*); (5) civil conspiracy (*id.* at 17); (6) violation of South Carolina Usury Laws (*id.*); (7) unjust enrichment (*id.* at 18); (8) rescission (*id.* at 19); (9) constructive trust (*id.*); (10) reformation and injunctive relief (*id.*); (11) violation of the South Carolina Unfair Trade Practices Act (*id.* at 20); (12) breach of fiduciary duty (*id.* at 21).

(11) pre and post judgment interest. (Compl. pp. 21-23.)⁴ As a result, Key Health can amply show more than a reasonable probability exists the amount in controversy, in this matter, will exceed \$75,000.00. Accordingly, this Court has diversity jurisdiction over Plaintiff's claims. 28 U.S.C. § 1332.

In the event any question arises as to the propriety of the removal of this matter, Key Health requests the opportunity to present briefs, oral argument, and, if necessary, affidavits and other evidence in support of its position that removal is proper.

WHEREFORE, Key Health hereby removes this matter from the South Carolina Court of Common Pleas for the Thirteenth Judicial Circuit to the United States District Court for the District Court of South Carolina, Greenville Division based on diversity jurisdiction. See 28 U.S.C. § 1332, 1441 and 1446.

Respectfully submitted,

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Greenville, South Carolina
October 26, 2020

⁴ Plaintiff's demand for punitive damages, alone, makes it appear to a legal certainty that Plaintiff's claims are for more than \$75,000. *Woodward v. Newcourt Commercial Fin. Corp.*, 60 F. Supp. 2d 530, 531 (D.S.C. 1999) (noting that a claim for punitive damages alone makes it virtually impossible to say that the claim is for less than the jurisdictional amount).

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Dana Michelle Edwards on behalf of)
 herself and others similarly situated,)
)
 Plaintiff,)
)
 vs.)
)
 Key Health Medical Solutions, Inc.,)
 VBS Physical Therapists, Inc., and)
 John Doe #1-100,)
)
 Defendants.)
)
 _____)

**IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT**

C.A. No.: 2020-CP-23-_____

**SUMMONS
(Class Action)**

TO THE DEFENDANTS ABOVE-NAMED:

You are hereby summoned and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint to the subscriber at Post Office 2343, Greenville, South Carolina 29602 within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to Answer the Complaint within that time, the Plaintiff will apply to the Court for the relief demanded in the Complaint and a judgment by default will be rendered against you.

Respectfully submitted,

s/ Russell W. Patrick

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August 31, 2020
Greenville, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Dana Michelle Edwards on behalf)
 of herself and others similarly)
 situated,)
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 Plaintiff,)
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 vs.)
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 Key Health Medical Solutions,)
 Inc., VBS Physical Therapists,)
 Inc., and John Doe #1-100,)
)
 Defendant(s).)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No.: 2020-CP-23-_____

COMPLAINT
(Class Action)

The Plaintiff, on behalf of herself and all others similarly situated, allege upon information and belief as follows:

Parties and Jurisdiction

1. Plaintiff Dana Michelle Edwards (Edwards) is a citizen and resident of the County of Greenville, State of South Carolina.
2. Upon information and belief, Defendant Key Health Medical Solutions, Inc. (Key Health) is a corporation organized and existing under the laws of the State of California and does business by providing financing for medical services to personal injury victims as well as purchasing medical cost receivables of personal injury victims from medical providers.
3. Upon information and belief VBS Physical Therapy, Inc. (VBS) is a corporation organized and existing under the laws of the State of South Carolina and doing business as a medical provider of physical therapy services which includes providing medical services to personal injury victims; that further, VBS principal place of business and the location for treatment of the named

Plaintiff is within Greenville County, South Carolina.

4. Upon information and belief Key Health and VBS entered into a business arrangement to recruit personal injury victims to use the services of Key Health to finance the medical expenses charged for services at VBS. That further, Key Health and VBS jointly determined the costs and financing of the services. In the process of recruitment and providing services Key Health and VBS, jointly and severally, committed the wrongful acts more particularly set forth later herein.

5. Upon information and belief, Defendant John Doe 1 - 100, are individuals, partnerships, corporations and/or limited liability corporations who have entered into business relationships with Key Health similar to those as alleged herein between Key Health and VBS within South Carolina and whose identities are not yet known to the Plaintiff; the services alleged to have been provided are broadly described as “physical therapy” and can be provided by licensed physical therapists, licensed chiropractors, licensed massage therapists, or medical providers under the supervision of licensed physicians.

6. The Plaintiffs bring these actions individually and on behalf of classes of individuals whose commonality is more specifically described later herein but includes:

- a. Individuals who are victims of personal injury caused by alleged acts of negligence by someone else;
- b. Who seek medical services for those injuries and are treated by physical therapy at VBS or other similar providers as defined.
- c. Who cannot afford to pay for services at the time the services are to be rendered.

- d. Who either are introduced to Key Health by the medical providers VBS and/or John Doe 1-100 from who they are seeking medical help or have their outstanding medical costs of the provider assigned to Key Health as a way to obtain medical services by having Key Health advance the cost of those services.
- e. Who, upon signing a contract with Key Health, receive the medical services needed for their injuries.
- f. Who are presented with bills for the cost of treatment that greatly exceeds the reasonable and customary charges for such services.
- g. Who, by virtue of the contract and/or assignment agreement, are forced to pay these unreasonable and unconscionable fees out of the proceeds of any personal injury settlement or verdict or, in the alternative, are forced to have proceeds for the payment of those unreasonable and unconscionable charges held in trust until the bill presented by Key Health is resolved.

7. This Court has subject matter jurisdiction, upon information and belief, this action because, as to the named Plaintiff, the Defendant VBS resides in Greenville County and transacts business within this county. John Doe Defendants either reside within Greenville County, South Carolina or do business within Greenville County, South Carolina.

8. This court maintains personal jurisdiction over all Defendants in this action because each regularly transacts business in South Carolina, including the financing of and the providing of medical services as well as entering into contracts with individuals within this state. These Defendants have established and satisfied minimum contacts with South Carolina by virtue of the

aforementioned acts and relationships.

9. Venue is proper in this judicial district because Defendant VBS and other John Doe Defendants reside, are licensed to do business, and/or transact business in Greenville County and are subject to personal jurisdiction in Greenville and provided medical services to the named Plaintiff in Greenville County.

10. Plaintiffs demand a jury trial.

Factual Allegations

11. On October 10, 2015, Plaintiff was involved in an automobile collision caused by the negligence of Vimalkumar Vadalía and sustained injury.

12. Edwards secured the services of Douglas F. Patrick, PA to represent her in her claim for damages emanating from the aforementioned auto collision.

13. As part of necessary medical treatment, Edwards was referred by the treating orthopaedic surgeon, Emmett Lucas, to VBS for physical therapy.

14. At the time of her injury, Edwards had major medical coverage through her employer but had not exhausted the deductible so charges incurred at VBS would be paid by her individually.

15. Under these circumstances, due to her injuries, Edwards was not able to work and did not have the funds to pay in advance for the therapy costs incurred through VBS.

16. VBS agreed to provide those physical therapy services if Edwards would sign an agreement with Key Health wherein Key Health was exclusively assigned the right to collect all amounts due for services from VBS.

17. The assignment agreement with Key Health required Edwards' attorney to sign agreeing that all charges for medical services assigned to Key Health would be paid directly to Key

Health out of the settlement or verdict funds.

18. The assignment agreement limited the cost assigned to Key Health to only the amount of the charges as provided by the medical providers, in this case, VBS.

19. Edwards agreed to the assignment and directed her attorney to sign as well.

20. Following the assignment, Edwards was treated for twenty-four (24) visits of physical therapy and, upon completion, VBS/Key Health presented a bill for those services in an amount ranging from \$382 to \$389 per visit with a total balance due of Nine Thousand Two Hundred Eighty-Two and No/100 Dollars (\$9,282.00).

21. That upon information and belief the reasonable value for physical therapy service on a per visit basis is less than One Hundred Dollars (\$100.00) per visit and as such the charges submitted by VBS and presented to Edwards for payment to Key Health, were three to four times the reasonable and normal costs for such services.

22. That upon information and belief the Defendant Key Health and VBS were at all times relevant hereto, acting as actual agents, conspirators, ostensible agents, partners and/or joint venturers and employees of all other defendants, and that all acts alleged herein occurred within the course and scope of said agency, employment, partnership, joint venture, conspiracy and/or enterprise, and with the express and/or implied permission, knowledge, consent, authorization and ratification of their co-defendants; however, this allegation is pleaded as an "alternative" theory wherever not doing so would result in a contradiction with other allegations.

23. There was no valid basis or justification for Key Health/VBS's conduct in grossly inflating Plaintiff's medical bill. The inflated amount billed by Key Health was a sham that did not reflect, as the assignment falsely stated, "the amount due for services by the Physician/Facility", the

"ordinary and customary charge" for the medical services, or administrative charges.

24. Key Health and VBS have engaged, and continues to engage, in a pattern and practice of charging unfair, unreasonable and inflated prices for medical care to accident victims who are generally the least able to pay these inflated and unreasonable charges.

25. Plaintiff is informed and believes, and on that basis alleges, that Defendants Key Health and VBS continued to market and assign proceeds and/or liens in the manner described herein after knowing that its marketing and representations were false and misleading, as set forth herein. Defendant's conduct and actions alleged herein were despicable, and were done maliciously, oppressively and/or fraudulently, with a wilful and conscious disregard of Plaintiff's and class members' rights. The conduct alleged herein was engaged in by representatives of Defendants, and officers, directors and/or managing agents of Defendants engaged in, authorized, and/or ratified the conduct complained of herein.

26. Absent an order from the Court, Plaintiffs and the respective Class will not be made whole nor will justice be provided for accident victims who have used or may in the future use Defendant Key Health's services in conjunction with VBS and/or the other John Doe physical therapy providers. Plaintiffs thus seek injunctive relief requiring the immediate cessation of the foregoing practices, including but not limited to charging accident victim's unfair, discriminatory, unreasonable and greatly-inflated rates; and pursuing collection actions against accident victims to collect the unfair and illegal charges. Plaintiff also seeks restitution and appropriate damages for themselves and the Class.

27. Upon information and belief, Key Health and VBS conspired to grossly inflate the value for medical services rendered so as to provide each with unjust enrichment to the detriment

of the patient/assignee who are named or class members, said conspiracy likely included:

- a. Agreement by VBS and Key Health to actively recruit and encourage patients to enter into assignment with Key Health.
- b. Agreement between VBS and Key Health as to the fees to be charged per visit and a pre-arranged division of these charges between VBS and Key Health.
- c. Agreement for Key Health to pay VBS its share of the fees charged upon completion of services and in amounts far higher than VBS would receive for the services rendered.

28. Further, upon information and belief, Key Health has engaged in similar agreements and conspiracies with other medical providers who provide medical services as described generally as physical therapy services within the State of South Carolina and whose identities are, at present unknown, but who are identified as John Doe Defendants 1-100.

Class Action Allegations

29. Plaintiffs bring this action on behalf of themselves and all others similarly situated, as members of the proposed class.

30. Plaintiff Edward's claims are typical of a group of patients, whom Key Health, VBS, and others identified as John Doe 1-100, medical providers have charged grossly unreasonable fees beyond those normally charged for services provided.

31. Plaintiff claims are typical of a group of patients, whom Key Health, VBS, and others identified as John Doe 1-100, medical providers have charged grossly unreasonable fees beyond those normally charged for services provided.

32. Pursuant to Rule 23 of the South Carolina Rules of Civil Procedure, and as otherwise alleged herein, the Defendants have acted or refused to act on grounds generally applicable to all members of each proposed class, thereby making final injunctive relief or declaratory relief concerning each proposed class as a whole appropriate.

33. This action is properly brought as a class action under Rule 23 of the South Carolina Rules of Civil Procedure for the following reasons:

- a. [Rule 23(a)(1)] The members of each proposed class are so numerous that separate joinder of each member is impracticable.
- b. [Rule 23(a)(2)] There are questions of law and facts common to each proposed class which predominate over any questions affecting individual members.

These common factual and legal questions include:

- I. Determination of the value rates charged by Key Health, VBS, and John Doe 1-100, other certain specific medical services as compared to the reasonable values for those services.
 - ii. Determination of the pre-arranged split of funds between the Defendants for the unreasonable charges for medical services.
 - iii. Determination of the named Defendants' liability, specifically as to the conspiracy to commit the same.
 - iv. Determination of whether the Defendants' collective actions violated HIPAA.
- a. [Rule23(a)(3)] The claims asserted by the Plaintiff is typical of the claims of

the members of each proposed class in that their claims involve the same facts as otherwise alleged herein, arise from the same practices or course of conduct that gives rise to the claims of all other class members, and are based on the same legal theories.

- b. [Rule23(a)(4)] Plaintiff is an adequate representatives of the proposed Class because their interests do not conflict with the interests of the members of the proposed classes that they seeks to represent, they adequately and truly represents the interests of the other proposed members, they have common claims with each proposed member based on the same essential facts, she has retained counsel competent and experienced in class action and complex mass tort litigation, and he intends to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiffs and their counsel.
- c. [Rule23(a)(5)] Each proposed class member, as defined, involves only class members for whom the amount in controversy exceeds One Hundred Dollars (\$100.00).

34. There are numerous and substantial questions of law and fact common to all members of the Class which will predominate over any individual issues. These common questions of law and act include, without limitation:

- a. Whether Key Health's, VBS's, and/or John Doe 1-100's, practice of charging accident victims grossly inflated rates for medical treatment is unlawful under any of Plaintiff's causes of action;

- b. Whether Key Health, VBS, and/or John Doe 1-100 have enforced and will continue to enforce liens, which obligate Plaintiffs and the Class to pay unreasonable and/or unconscionable charges for medical care in breach of contract;
- c. Whether Key Health, VBS, and/or John Doe 1-100 have utilized unfair, illegal collection practices, and/or liens to collect grossly-inflated medical debts from Plaintiff and the Class;
- d. Whether Key Health's, VBS', and/or John Doe 1-100's, pricing practices as to Plaintiff and the Class are unfair, unconscionable, deceptive and/or illegal;
- e. Whether Key Health, VBS, and/or John Doe 1-100 falsely represented that the lien for medical services has included, but not limited to having a relationship to the normal and reasonable value for medical services provided;
- f. Whether Key Health, VBS, and/or John Doe 1-100, through its conduct, has been unjustly enriched to the detriment of Plaintiff and the Class.

35. This class action may be maintained under Rule 23 of the South Carolina Rules of Civil Procedure as common questions of fact and law relating to liability predominate over any questions affecting only individual class members. The questions concerning the Defendants' common course of alleged conduct, including the individual and institutional fraud implemented, common issues of the Defendants' alleged liability therefor, the best method of minimizing the patients' losses of the application of HIPAA to the Defendants' conduct and scheme, all predominate over any individualized issues. In addition, the predominance of common issues is

further supported by the value of class trial of common questions of injunctive and declarative relief. Moreover, class action treatment is a superior method for the fair and efficient adjudication of the controversy. The members of the class have little or no interest in individually controlling the prosecution of separate claims. It is highly desirable from the standpoint of manageability and resources to concentrate the litigation pertaining to the class claims in a single forum within South Carolina. Whatever difficulties may exist in the management of the class action will be greatly outweighed by the class action procedure, including, but not limited to:

- a. Given the size of individual Class members claims, few, if any, Class members could afford to seek legal redress individually for the wrongs the Defendants have committed against them and the other proposed class members have no substantial interest in individually controlling the prosecution of individual actions;
- b. Other available means of adjudicating the claims of Plaintiffs and other members of each proposed class, such as hundreds of individual actions brought separately and pursued independently in state or federal courts, are impracticable and inefficient; specifically
 - I. maintaining individual actions would be unduly costly to the Defendants who would be forced to respond to the same discovery requests in separate cases.
 - ii. maintaining individual actions would require the expenditure of a tremendous amount of judicial resources;
 - iii. maintaining individual actions would create a risk of inconsistent

- adjudications of the same factual and legal issues;
- iv. using the class action procedure is far more economical for the class members who will incur a fraction of the attorney fees they would incur in individual actions;
 - v. it is desirable to concentrating the litigation of the claims in this particular forum because this is the district where most of the Plaintiffs and witnesses reside
 - vii. there are no unusual difficulties in managing this action as a class action.
- c. This action will cause an orderly and expeditious administration of the class claims, economics of time, effort and expense will be fostered and uniformity of decisions will be insured;
 - d. Without a class action, the proposed class members will continue to suffer damages and Defendants' tortious and wrongful conduct, and possible continuing harm to class members, will proceed without remedy while Defendants continue to retain and reap the proceeds and profits of its wrongful conduct;
 - e. Management of this action poses no unusual difficulties that would impede its management by the Court as a class action; and,
 - f. The claims brought by Plaintiffs and other members of the proposed classes are not now, nor have they been, the subject of another class action to the best of Plaintiff's knowledge.

For A First Cause of Action
Violations of SC Consumer Protection Code Credit Sales Act
(S.C. Code §37-2-101, *et seq.*)

____36.____ All allegations previously alleged are incorporated herein by reference.

____37.____ The transactions/contracts/accounts receivable previously described are subject to the provisions of the Credit Sales Act of the South Carolina Consumer Protection Code (§37-2-101, *et.seq.*) because

- a. The transaction meets the definition of a consumer credit sale (S.C. Ann. §37-2-104) since:
 1. The Defendants are regularly engaged as a seller in credit transaction of the same kind either as the actual seller (VBS and/or John Does 1-100) or as an assignee of the seller’s right to payment (Key Health).
- b. The buyer, Edwards, and all other class members are individuals and not organizations.
- c. The debt is subject to a credit service charge in the form of payment greatly in excess of the reasonable cost of services which are as an incident of the extension of credit and are pre computed or pre-determined at the time of the extension of credit.
- d. The amount financed for the named Plaintiffs or each individual class members does not exceed \$25,000.00.

38. That the amount charged exceeded the permissible maximum rate of interest and the Defendants have not filed a rate schedule with the South Carolina Department of Consumer Affairs (S.C. Code §3-2-109).

39. That pursuant to §37-5-102, the named Plaintiff and class member are entitled to:
- a. Actual damages;
 - b. Attorney fees;
 - c. Civil penalties in the amount of \$1,000 per violation.

For A Second Cause of Action

Fraud

40. Plaintiff incorporates by reference all previous allegations not inconsistent herewith as if re-alleged and recited verbatim herein.

41. Key Health and VBS both, verbally and in writing, represented to Edwards that Key Health was advancing costs related to medical services provided to Edwards by VBS and Edwards' assignment/obligation to pay Key Health was limited to the charges for medical service.

42. Specifically the language of the assignment agreement, attached as **Exhibit A**, states "assign a lien on proceeds.....in an amount equal to all sums as may be due provided for any and all medical treatment or services rendered to Patient."

43. These statements were false and were known to be false by Key Health and VBS when they were made

44. Key Health and VBS made statements with intent that Edwards would rely on these statements.

45. Edwards did rely on these statements and entered into the Assignment Agreement.

46. Edwards relied on these statements to her detriment and harm.

47. That the aforementioned conduct of Key Health and VBS was both joint and severable.

48. That the allegations of paragraphs 31-36 were substantially the same as to all class

members by Key Health, VBS, and John Doe 1-100.

For A Third Cause of Action
Constructive Fraud

49. Plaintiff incorporates by reference all previous allegations not inconsistent herewith as if re-alleged and recited verbatim herein.

50. That the relationship between the Plaintiff and the Defendants, Key Health and VBS, involved a confidential and fiduciary relationship based on protected health and financial information supplied by the Plaintiff.

51. That the allegations of the preceding cause of action, with the exception of the allegations as to intent, are both re-alleged and applicable to this cause of action.

52. That the allegations of constructive fraud are substantially the same as to all class members by Key Health, VBS, and John Doe #1-100.

For A Fourth Cause of Action
Breach of Contract

53. Plaintiff incorporates by reference all previous allegations not inconsistent herewith as if re-alleged and recited verbatim herein.

54. The actions of the Defendants in charging amount for medical services were not in any way related to the services provided and in intentionally and knowingly failing to disclose at the time of the contract, the charge incurred by the Plaintiff, and other proposed members of the class, represents material breaches of the contract.

55. That the allegations of paragraphs 38-39 were substantially the same as to all class members by Key Health, VBS, and John Doe 1-100.

For A Fifth Cause of Action
Civil Conspiracy

56. Plaintiff incorporates by reference all previous allegations not inconsistent herewith as if re-alleged and recited verbatim herein.

57. Defendants Key Health, VBS, and John Doe 1 - 100, conspired together to set prices for medical services to be provided to the Plaintiff and by acting in concert did so with the purposes of defrauding and injuring the Plaintiff, and proposed class members, out of funds to be received in settlement of their personal injury claims.

58. In addition to the damages sought by other causes of action, Plaintiff and proposed class members have suffered legal fees to enforce their rights, as well as harm.

For A Sixth Cause of Action
Violation of South Carolina Usury Laws
(S.C. Code §37-1-101 et seq)

59. Plaintiff incorporates by reference all previous allegations not inconsistent herewith as if re-alleged and recited verbatim herein.

60. The Plaintiff and proposed class members have a legal right to settlement proceeds resulting from their personal injury claims but in part the Defendants have wrongfully converted these funds to their own use.

61. Defendants, jointly and severally, never had a right to the funds converted and knew the funds did not belong to them.

62. Defendants, jointly and severally, took these actions with the intent to deprive the Plaintiff, and proposed class members, of property and money that belonged to them.

63. Edwards and all class members relied on the statements to her detriment in that she suffered financial losses. Violation of State Consumer Credit Laws (Usury) (§ 37-1-101, et seq., also

known as S. C. Consumer Protection Code.)

64. Plaintiffs incorporates by reference all previous allegations not inconsistent herewith as if re-alleged and recited verbatim herein.

65. Key Health agreed to advance funds on behalf of Edwards and all other class member to cover medical expenses incurred at VBS for physical therapy.

66. Despite these express representations, Key Health, VBS, and/or John Doe 1-100 acting together, charged Edwards and all other class members, amounts that were significantly higher than the value of the medical services and the amounts charged were not based on the value of those services.

67. To the contrary, Key Health, VBS, and John Doe 1-100 charged preset finance charges and interest rates on the actual cost of medical expenses.

68. These interest rates/finance charges exceeded statutorily permitted rates and charges pursuant to §§37-3-103, *et seq.* of the South Carolina Codes of Laws.

69. That the Defendants, jointly and severally, intentionally failed to disclose the annual percentage rated (APR) being charged to Edwards and all other class members for the loan proceeds advanced.

70. That in charging these amounts the Defendants were in violations of the statutory limits on loans.

For A Seventh Cause of Action
(Unjust Enrichment)

71. Plaintiffs incorporate by reference all previous allegations not inconsistent herewith as if re-alleged and recited verbatim herein.

72. The Defendants, jointly and severally, have been unjustly enriched by their activities

and are not entitled to retain the monies they have unjustly collected from the Plaintiff and class members.

For An Eighth Cause of Action
Rescission

73. Plaintiffs incorporate by reference all previous allegations not inconsistent herewith as if re-alleged and recited verbatim herein.

74. Defendants, jointly and severally, induced Plaintiff and others similarly situated into entering contracts by misrepresenting, concealing deceit and/or fraudulently representing the material terms of the contract.

75. The Plaintiff and others similarly situated were without fault and are entitled to rescission of the contract.

For A Ninth Cause of Action
Constructive Trust

76. Plaintiffs incorporate by reference all previous allegations not inconsistent herewith as if re-alleged and recited verbatim herein.

77. A constructive trust should be imposed upon all monies collected by the Defendants from Plaintiff and members of the proposed class.

For A Tenth Cause of Action
Reformation of Key Health Contract and Injunctive Relief

78. Plaintiffs incorporate by reference all previous allegations not inconsistent herewith as if re-alleged and recited verbatim herein.

79. The potential for harm to future violation and potential class members requires this Court to reform the existing contracts to provide:

- a. All charges, interest notes, and costs be specifically stated and disclosed.

- b. The reasonable and customary charge for the services provided by disclosed and compared to actual charges.
- c. All contract terms of requiring undisclosed payment of fees be removed.
- d. A procedure within the contract for contesting fees, interests, notes, and addition of charges to be established.
- e. Source of alternative and lesser financing be disclosed.
- f. The true relationship between the Defendants be fully disclosed.

80. Further, Plaintiff would request this Court issue an injunction prohibiting the Defendants from entering into any further contract with potential future class members until the Defendants' contracts are reformed to comply with the previous paragraph.

For An Eleventh Cause of Action
(Unfair Trade Practices)

81. Plaintiff incorporates all allegations of the foregoing paragraphs of the Counterclaims as if fully stated herein.

82. Plaintiff and all others similarly situated are "persons" with the meaning of S.C. Code Ann. §§39-5-10, *et seq.*

83. Defendants Key Health, VBS, and John Doe(s) 1-100 are engaged in commerce within the meaning of S.C. Code Ann. §§39-5-10, *et seq.*, to wit:

- a. overcharging patients for physical therapy beyond reasonable and customary rates;
- b. inflating prices for physical therapy;
- c. failing to act in patients' best interest;
- d. converting patients' money to their own use;

- e. violating S.C. statutes regarding usury laws and debts; and,
- f. in scheming to collect, or hold in trust, unconscionable and unreasonable medical fees of personal injury patients.

84. The Defendants' unfair and deceptive acts are capable of repetition and being repeated on a regular basis; and, upon information and belief, have been in fact repeated and continue to be repeated.

85. The Defendants' unfair and deceptive acts effect the public interest, who have, *inter alia*, an interest in paying reasonable and accurate pricing for services offered in commerce.

86. Upon information and belief, the Defendants knew, or should have known, their actions and/or omissions, described herein, violate the *South Carolina Unfair Trade Practices Act*.

87. As a direct, foreseeable, consequential, and proximate cause of the Defendants' unfair and deceptive trade practices, jointly and severally, Plaintiff and those similarly situated, have suffered an ascertainable loss, including but not limited to, the overpayment of charges beyond what is reasonable and customary.

88. Plaintiff, and those similarly situated, are entitled to recover their actual damages, which amount the Court should respectfully treble, together with an award of attorney's fees, pre and post judgment interest, and costs.

For A Twelfth Cause of Action
(Breach of Fiduciary Duty as to VBS & John Doe(s) 1-100)

89. Plaintiff incorporates all allegations of the foregoing paragraphs of the Counterclaims as if fully stated herein.

90. Defendants VBS, and other John Doe Defendants who offer physical therapy services, are in a fiduciary relationship with the Plaintiff, and others similarly situated in their roles as a

medical provider.

91. Because of the fiduciary relationship, the Defendants owe, among others, a duty of loyalty and duty of care.

92. Defendant VBS, and other John Doe(s) 1-100, violated the fiduciary duty owed to their patients by, among others:

- a. inflating their prices unreasonably and unconscionably;
- b. failing to disclose their business relationship with Key Health; and,
- c. placing their interests above their patients.

93. Plaintiff, and others similarly situated, were consequently and proximately damaged as a result of the breach of fiduciary duty as alleged herein.

WGEREFORE, Plaintiff individually and on behalf of the proposed class members hereby demand a jury trial on all issues that have been or may hereafter be raised in the pleadings whether filed on behalf of Plaintiff or the named Defendants. Plaintiff further demands judgment for the following relief:

- I. Certification of the proposed class
- II. Reformation and injunction relief as follows:
 - A. An Order of the Court reforming all current future or prospective contacts of the Defendants to include:
 - a. All charges, interest notes, and costs be specifically stated and disclosed.
 - b. The reasonable and customary charge for the services provided by disclosed and compared to actual charges.

- c. All contract terms of requiring undisclosed payment of fees be removed.
 - d. A procedure within the contract for contesting fees, interests, notes, and addition of charges to be established.
 - e. Source of alternative and lesser financing be disclosed.
 - f. The true relationship between the Defendants be fully disclosed.
- B. An Order of the Court enforcing the Defendants from any future or prospective contractual relationships until the Defendants have complied with this Court's Order reforming contracts.
- III. Compensating damages in an amount to be assessed by the jury as just and proper but including without limitation:
- A. Actual damages including economic and non-economic damages.
 - B. Contractual damages including consequential and incidental damages.
 - C. All other reasonable and just actual damages proximately caused by the Defendants wrongful conduct.
- IV. Appropriate attorney fees and all fines and penalties allowable under SC Code §37-1-101 *et seq.* and SC Code §37-2-101 *et seq.*
- V. Punitive damages in an amount to be assessed by the jury as just and proper and in an amount sufficient to punish the Defendants and deter further misconduct.
- VI. Such other and further relief as this honorable Court deems just and proper.

[SIGNATURE PAGE ON FOLLOWING PAGE]

Respectfully submitted,

s/ Russell F Patrick

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Douglas F. Patrick, # 4358
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(864) 242-9000
Attorneys for Plaintiff

August 31, 2020

Greenville, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Dana Michelle Edwards on behalf of)
 herself and others similarly situated,)
)
 Plaintiff,)
)
 vs.)
)
 Key Health Medical Solutions, Inc., VBS)
 Physical Therapists, Inc., and John Doe)
 #1 - 100,)
)
 Defendant(s).)
 _____)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2020-CP-23-04048

AFFIDAVIT OF COMPLIANCE


I hereby certify that I am an employee of the law firm of Douglas F. Patrick, PA, counsel for the Plaintiff, Dana Michelle Edwards, and that, pursuant to §15-9-245, on September 22, 2020, I placed in the United States Mail, postage prepaid, Certified - Return Receipt Requested, a filed copy of the *Summons and Complaint*, along with *Discovery Requests* addressed to: Key Health Medical Solutions, Inc., c/o Cogency Global, Inc., 2 Office Park Court, Suite 103, Columbia, SC 29223, for service upon the defendant, Key Health Medical Solutions, Inc., the registered agent listed on the website for the South Carolina Secretary of State.

Attached is a copy of the return receipt indicating receipt on **September 25, 2020**.

Sherri Garrett

 Sherri K. Garrett, Paralegal for
 Russell W. Patrick, SC Bar 100717
 Douglas F. Patrick, PA
 211 Pettigru Street
 Greenville, South Carolina 29601
 (864) 242-9000
 Attorneys for the Plaintiff

Greenville, South Carolina
 October 5, 2020

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY													
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature <i>Lisa Carter</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee												
1. Article Addressed to: Key Health Medical Solutions, Inc. c/o Gocency Global, Inc. 2 Office Park Court, Suite 103 Columbia, SC 29223	B. Received by (Printed Name)	C. Date of Delivery 9/25/20												
 9590 9402 5796 0034 4030 78	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No													
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PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt														

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Attn: Sherri Garrett
 Douglas F Patrick, PA
 211 Pettigru St
 Greenville, SC 29601

D. Edwards

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action: Key Health, VBS Physical Therapists Charge Personal Injury Victims 'Grossly Inflated' Rates for Medical Care](#)
