

1.02 Plaintiffs brought class claims against: 1) Defendant APP of New Mexico ED, PLLC (“APP”), an emergency room staffing company; and 2) Defendant Lovelace Health System, LLC (“Lovelace”), owners of a group of hospitals that use APP to provide emergency room doctors and nurse practitioners. Plaintiffs’ claims relate to alleged violations of the New Mexico Unfair Practices Act (“UPA”), NMSA §§ 57-12-1 *et. seq.*, conversion, willful breach of contract, unjust enrichment, civil conspiracy, injunctive relief and punitive damages. *See* Ex. A, Compl. ¶¶ 4, 106, and 111.

1.03 Plaintiffs allege Defendants entered into a business relationship under which APP provides emergency room physician and nurse practitioner staffing for Lovelace hospitals. *Id.* at ¶ 13. Plaintiffs contend Defendants systematically overbilled Plaintiffs, and many potential class members, by not disclosing to Plaintiffs that they may receive a separate bill for the emergency medicine practitioner services. *Id.* at ¶¶ 19, and 20. However, Plaintiffs allege Defendants bill separately for the services they provide patients. *Id.* at ¶ 14. Accordingly, the Plaintiffs themselves acknowledge Lovelace was not involved in the subject billing by APP. The Complaint does not allege Lovelace’s separate billing had anything to do with their claims. Instead, it is APP’s alleged overbilling that forms the gravamen of their claims. *Id.* at ¶¶ 21, 37, 39-42, 51-59, 68-75, 85-92, 96(a).

1.04 Plaintiffs’ claims against Defendants are contradicted by the Plaintiffs’ Acknowledgements and Lovelace’s disclosures. The allegations against Lovelace regarding purported overbilling are directly contradicted by the records in this case. For example, Plaintiffs allege that “Lovelace does not disclose to its patients whether they are being treated by Lovelace or APP employees” and that “Lovelace does not state to its patients that they may end up paying more than the in-network rate for services provided by APP employees.” *Id.* at ¶¶ 19

and 20. Those allegations are contrary to the “Consent For Treatment” that was executed by each of the putative class representatives or their representatives.¹ The Consents For Treatment contain the following disclosures and acknowledgements:

Independent Status of Physicians, Residents, Medical Students and Nurses – CAUTION! Please Read Carefully Before Signing:

The medical treatment rendered during my hospital admission may be provided by physicians, residents, and medical students (under the supervision of physicians and/or residents). These physicians, residents, and medical students are independent contractors and not employees of the hospital. In addition, nursing care rendered during my hospital admission may be provided by nurses or other professional staff who are also independent contractors or employees of a placement agency and not employees of the hospital. By signing this document, I acknowledge that:

* * *

- The hospital has not represented or taken any other action to induce me to believe that the physicians, residents, medical students and nurses are employees of the hospital.
- I understand, I will receive a separate bill from the provider.

* * *

Release Medical Information, Assignment of Benefits, Insurance Claims and Payment of Charges

I understand that LHS will use my information for the purposes of treatment, payment and health care operations.

* * *

- I understand that the costs of my medical treatment that are quoted to me prior to billing are estimates. Actual charges may be more or less, and additional charges such as consulting physician fees or costs of pharmacy, laboratory, and supplies may not be compiled prior to my discharge. All charges will appear on my monthly statement.

* * *

¹ Upon the entry of a confidentiality order Lovelace will produce the subject signed Consent for Treatment forms to the Court and will make them available to Plaintiffs’ counsel for inspection. They are not included in the petition at this time in order to maintain confidentiality under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

- I understand that filing of an insurance claim does not discharge my responsibility for payment of the charges incurred.
- I agree to pay the actual charges for my medical treatment, less the amount paid to LHS by third party payers, if any. LHS may obtain a credit report on me from a credit reporting agency.

[Underlines added only]. In addition, each putative class representative or representative signed the Consent for Treatment stating: “I have read this document, I have had my questions answered to my satisfaction, and I understand and agree to the content of this document.” *See* Consent For Treatment at 3. The disclosures and acknowledgements contained in the Consent For Treatment undermine and contradict the Plaintiffs’ allegations that they were not informed about the potential for treatment by non-employee physicians or the potential for separately billed physician services.

1.05 Following their treatments at Lovelace, each of the putative class representatives was sent a letter containing an itemization of their hospital services. Those itemizations show that their insurer Blue Cross Out of State made payments and adjustments to Lovelace and the putative class representatives were only charged their co-payment. Each putative class members were advised that “Current Hospital Account Balance: 0.00.” The itemizations show that none of the putative class representatives were billed by Lovelace for physician services. Nor were the putative class representatives subject to collection efforts by Lovelace for the services provided by Lovelace for the subject emergency room visits. Accordingly, the documents in this case and the Plaintiffs’ own allegations demonstrate that Lovelace was not involved in the alleged overbilling that forms the basis for Plaintiffs claims.

1.06 APP is out-of-network with Blue Cross Blue Shield New Mexico. Plaintiffs claim APP billed Plaintiffs’ insurance at out-of-network rates. *Id* at ¶¶ 34, 51, 68 and 85. Plaintiffs’ insurance company allegedly informed Plaintiffs and APP that it would only issue

payment for in-network rates for the emergency services rendered to Plaintiffs. *Id.* at ¶¶ 35, 52, 69, and 86. Plaintiffs’ claim their insurance companies sent Plaintiffs checks for the in-network amounts as reimbursement for the amount owed to APP. *Id.* at ¶¶ 36, 53, 70 and 87. Plaintiffs claim APP continued efforts to collect amounts owed by sending bills to Plaintiffs for the out-of-network amount, and by eventually sending these amounts to a collection agency. *Id.* at ¶¶ 37, 39, 54, 56, 71, 73, 88, and 90.

1.07 Plaintiffs seek an unspecified amount of actual damages, punitive damages, treble damages, costs and attorney fees. *Id.* at ¶¶ 105, 106, 111, 118, 122, and p. 13.

1.08 APP has not yet filed a responsive pleading or motion directed to the Complaint.

1.09 As set forth more fully below, this case is properly removed to this Court under CAFA and pursuant to 28 U.S.C. §§ 1441, 1446, and 1453, because APP has satisfied the procedural requirements for removal, and because this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d).

II. SUMMARY OF THE ARGUMENT

2.01 This Court has jurisdiction under the Class Action Fairness Act (“CAFA”), as codified at 28 U.S.C. § 1332(d). First, there is minimal diversity between the parties because Plaintiffs are New Mexico residents and APP is a citizen of Tennessee. Plaintiffs affirmatively allege, in fact, that APP is a “foreign limited liability company.” *Id.* at ¶ 9. Second, there are at least 100 members in the proposed class, as Plaintiffs allege there are more than 1,000 Plaintiff Class Members. *Id.* at ¶ 94. Third, the amount in controversy exceeds \$5,000,000 (assuming total victory by plaintiffs, as the Court must do in this context – though Defendants contest the Complaint’s allegations), as Plaintiffs seek actual damages, punitive damages, treble damages, costs and attorney fees for each member of the estimated thousands of Plaintiff Class Members.

Id. ¶ 330. Finally, Plaintiffs cannot meet their burden of proving that any exception to CAFA jurisdiction applies.

III. GROUNDS FOR REMOVAL

A. Procedural Requirements for Removal Have Been Satisfied

3.01 APP's removal of this action is timely. APP's statutory registered agent was served with the Complaint and summons on February 21, 2020. This Notice of Removal has been filed within 30 days of the Complaint being served on APP. 28 U.S.C. § 1446(b)(1).

3.02 Venue is proper in this Court because the Second Judicial District Court, County of Bernalillo, New Mexico, is located in the District of New Mexico. *See* 28 U.S.C. § 1441(a) (a state-filed action subject to federal jurisdiction may be removed "to the district court ... for the district and division embracing the place where such action is pending").

3.03 As required under 28 U.S.C. § 1446(a), APP has attached copies of all process, pleadings, and orders served upon APP with respect to this action. *See* Ex. B.

3.04 As required under 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon Plaintiffs' counsel, and a copy is being filed with the Clerk of the Second Judicial District Court, County of Bernalillo, New Mexico.

B. The Court Has Diversity Jurisdiction Under CAFA

3.05 The Court has diversity jurisdiction under CAFA, because (1) minimal diversity exists; (2) the class asserts an aggregate amount in controversy that exceeds \$5 million; and (3) the number of persons in the purported class exceeds 100.

a. There is Minimal Diversity

3.06 Plaintiffs Brian Lax, Tracy Buron-Hahnlein, Werner Hahnlein, and Jeremy Hader are individuals who are residents of the State of New Mexico. *See* Ex. A, Compl. ¶¶ 5 - 8.

According to the Complaint, other members of the putative class are also residents of the State of New Mexico. *Id.* at ¶¶ 1 and 93. APP is a foreign company incorporated under the laws of Tennessee and has its principal place of business in Tennessee. *Id.* at ¶ 9; *see* Ex. C, McQueen Decl. ¶ 2. Lovelace is a citizen of New Mexico. *See* Ex. A, Compl. ¶ 10. Subject matter jurisdiction exists under 28 U.S.C. § 1332(d)(2)(A), because Plaintiffs and the members of the proposed class of plaintiffs are residents of New Mexico and APP is a citizen of a Tennessee. *See* 28 U.S.C. § 1332(d)(2)(A).

b. The Amount in Controversy Exceeds \$5 Million

3.07 The amount in controversy exceeds the sum or value of \$5 million, exclusive of interests and costs, because Plaintiffs are seeking actual damages, punitive damages, treble damages, and attorney fees for a class that could encompass thousands of individuals' out-of-network patient accounts sent to collections for emergency medical services rendered at Lovelace hospitals in New Mexico in the past four years.

3.08 The class is defined as “all New Mexico residents who, beginning four years prior to the filing date of this lawsuit, were billed by APP for amounts greater than the in-network amount permitted by their insurance provider for the medical services provided at Lovelace facilities....Plaintiffs believe the number of members of the class exceeds 1,000 persons.” *See* Ex. A, Compl. ¶¶ 93 – 94. This overly broad class seeks an unspecified amount in actual damages. *Id.* at ¶¶ 105, 111, 118, 122, and p. 13. In addition to actual damages, Plaintiffs and the proposed class seek injunctive relief against APP to enjoin APP “from continuing to engage in overbilling, ordering APP to cease all collection efforts by themselves or third parties under their control for amounts they are not owed, and ordering APP to correct any inaccurate credit reporting resulting from their violations of the law.” *Id.* at ¶ 106.

3.09 The claims of the individual class members can be aggregated to satisfy the amount in controversy requirement. *See* 28 U.S.C. § 1332(d)(6); *Standard Fire Ins. v. Knowles*, 133 S.Ct. 1345, 1348-49 (2013). In 2016, APP sent approximately 3,500 out-of-network patient accounts to collections, averaging \$940 per account, for emergency medical services rendered at Lovelace hospitals in New Mexico. *See* Ex. C, McQueen Decl. ¶ 4. In 2017, APP sent approximately 3,200 out-of-network patient accounts to collections, averaging \$1,005 per account, for emergency medical services rendered at Lovelace hospitals in New Mexico. *Id.* In 2018, APP sent approximately 4,200 out of network patient accounts to collections, averaging \$1,047 per account, for emergency medical services rendered at Lovelace hospitals in New Mexico. *Id.* The value of the out-of-network patient accounts sent to collections for emergency medical services rendered at Lovelace hospitals in New Mexico between 2016 and 2018 exceeded \$5,000,000. *Id.*; *see* Ex. C, McQueen Decl. ¶ 4; *see Hunt v. The Washington State Apple Advertising Communication*, 432 U.S. 333, 347 (1977) (“the amount in controversy is measured by the value of the object of the litigation” when the plaintiff seeks injunctive or declaratory relief); *Lovell v. State Farm Mutual Auto. Ins. Co.*, 466 F.3d 893, 897 (10th Cir. 2006) (Tenth Circuit follows the “either viewpoint rule” which considers the higher of the “value to the plaintiff or the cost to the defendant...”). Finally, the proposed class also seeks punitive damages, treble damages, and attorneys’ fees. *Id.* at ¶¶ 105, 106, 111, 118, 122, and p. 13. While APP contends that no class should be certified and that it has no liability to Plaintiffs or any class, the amount in controversy by any measure exceeds \$5 million.

c. Exceptions in CAFA Do Not Apply

3.10 APP has made a prima facie case for CAFA jurisdiction; therefore, the burden shifts to Plaintiffs to establish that a statutory exception to CAFA jurisdiction applies. *Woods v.*

Standard Ins. Co., 771 F.3d 1257, 1262 (10th Cir. 2014); *Coffey v. Freeport McMoran Copper & Gold*, 581 F.3d 1240, 1243 (10th Cir. 2009). Plaintiffs cannot establish any exceptions.

i. “Local Controversy” Exception Does Not Apply

3.11 In a case like this where the class might be composed of New Mexico residents², the local controversy exception applies only when the plaintiff class meets its burden of proving that at least one local defendant is a defendant (a) "from whom significant relief is sought by members of the plaintiff class," and (b) "his alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class." 28 U.S.C. § 1332(d)(4)(A). *See also, Woods v. Standard Ins. Co.*, 771 F.3d 1257, 1262 (10th Cir. 2014) (“[O]nce a defendant establishes removal is proper, a party seeking remand to the state court bears the burden of showing jurisdiction in federal court is improper under one of CAFA’s exclusionary provisions.”). Congress intended the "local controversy" exception to CAFA jurisdiction to be “narrow” and to accomplish that, “carefully drafted [CAFA] to ensure that it does not become a jurisdictional loophole.” *Evans v. Walker Indus., Inc.*, 449 F.3d 159, 1163 (11th Cir. 2006) (quoting Senate Report on CAFA, S. Rep. No. 109-14 at 39 and 42, 2005 WL 627977 (Feb. 28, 2005)). Plaintiffs' allegations do not come close to stating a viable claim under Fed. R. Civ. P. 8(a), 9(b), or 12(b)(6). *See Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1969 (2007) (naked assertions will not suffice and conclusory statements unsupported by factual content are not accepted as true; rather, a claim must contain sufficient factual matter, which, if accepted as true, "nudges [the] claim crosses the line from conceivable to plausible"); *see also Ridge at Red Hawk, LLC v. Schneider*, 493 F.3d 1174, 1177 (10th Cir. 2007). Here, the allegations in the Complaint do not

² The Plaintiff class is allegedly made up of “a class of all New Mexico residents.” *See* Ex. A, Compl. ¶ 93. An allegation of “residency” alone is insufficient because residency and citizenship are not necessarily equivalent. *See Fulgenzi v. Smith*, USDC-NM case no. CIV 12-1261 RB/RHS, Memo. Op. and Order at 6 (July 2, 2013) (denying remand and stating “[T]he class definition itself is insufficient to allow the court to draw conclusions about the citizenship of class members. . . . Plaintiff has not satisfied his burden to establish that at least two-thirds of the proposed Plaintiff Class Members are New Mexico citizens by relying on his definition of that class.”)

establish “significant relief” or a “significant basis” with respect to Lovelace, the only “local defendant.”

3.12 In an obvious attempt to defeat diversity jurisdiction, Plaintiffs named Lovelace, a corporate entity that happens to be incorporated in New Mexico, as a “local defendant,” but they have wholly failed to make any factual allegations against LHS that would support a viable claim because Lovelace was not involved in the alleged overbilling which forms the basis of the Plaintiffs’ claims. The “significant relief” component requires a party challenging CAFA jurisdiction based on the local controversy exception to prove that at least one local defendant is a defendant “from whom significant relief is sought by members of the plaintiff class.” 28 U.S.C. § 1332(d)(4)(A)(i)(II)(aa). Plaintiffs’ conclusory allegations of “joint enterprise” are wholly insufficient. A mere allegation of joint and several liability may not be sufficient to establish the “significant relief” prong. *See Woods*, 771 F.3d at 1269 (“Plaintiffs’ assertion that the defendants are jointly and severally liable cannot alter Ms. Quintana’s actual significance as a defendant.”). Indeed, the court must compare the relative liability of the diverse and non-diverse defendants. *Fulgenzi* at *4 (“Plaintiff has not demonstrated how the proposed plaintiff class seeks “significant relief” from Defendant Smith in comparison to the total relief sought against all Defendants. For this reason, Plaintiff has failed to establish the “significant relief” requirement of the local controversy exception.”). When applying that standard here, it is clear Lovelace is not a significant defendant.

3.13 The Plaintiffs repeatedly state that it was APP who collected and overcharged the fees. *See* Ex. A, Compl. ¶¶ 37-42, 54-59, 68-75 and 85-92. Plaintiffs do not provide any allegations Lovelace attempted to bill or collect the alleged overcharges from the Plaintiffs. Instead, Plaintiffs allege Lovelace billed “separately for the services.” *Id.* at ¶14. In evaluating

whether significant relief is sought against a local defendant, the Court should compare the allegations against the local and diverse defendant. *See Valdez v. Metropolitan Property & Cas. Ins. Co.*, 867 F.Supp.2d 1143, 1187 (D.N.M. 2012) (“Relative to the other Defendants, Desert Mountain’s role appears to have been less significant; . . .”). Here, aside from the conclusory allegations of “joint enterprise,” the Plaintiffs do not allege Lovelace was involved in the alleged overbilling. Because the focus of the complaint is on APP’s calculation, billing and collecting efforts, the relief sought and conduct of APP is qualitatively different from the relief sought and conduct of Lovelace. *See Valdez*, 867 F.Supp.2d at 1187-8 (“This conduct is much like the local defendant’s conduct in *Opelousas Gen. Hosp. Auth. v. FairPay Solutions, Inc.*, [655 F.3d 358 (5th Cir. 2011)], where the Fifth Circuit held that the plaintiff failed to meet the local-controversy exception’s requirements, because the plaintiffs’ claims against the local defendant rested on the allegation that the local defendant relied on the non-local defendant’s calculations.”). Plaintiffs do not seek significant relief against Lovelace.

3.14 Similarly, the “significant basis” element is lacking against Lovelace. The “significant basis” element requires a party challenging CAFA jurisdiction based on the local controversy exception to prove, *inter alia*, that at least one local defendant is a defendant “whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class.” *See* 28 U.S.C. § 1332(d)(4)(A)(i)(II)(bb). Resolving this issue involves a quantitative and qualitative comparison of the conduct of the diverse and non-diverse defendants. *See Woods*, 771 F.3d at 1266-7 (“Furthermore, in considering Ms. Quintana’s significance as a defendant, we must compare her conduct with that of the other named defendants. . . . When viewed under this lens, we have little difficulty concluding Ms. Quintana is not a significant local defendant because Plaintiffs have failed to carry their burden of establishing that her conduct forms a

significant basis for their claims and they seek significant relief from her.”). The conduct alleged with respect to APP is qualitatively different from that alleged against Lovelace. APP is accused of attempting to bill and collect the overcharges from the Plaintiffs. In contrast, Lovelace is alleged to have failed to disclose the possibility of overcharges and its use of third-party contractors. *See* Ex. A, Compl. ¶¶ 19 and 20. This qualitative difference demonstrates Lovelace’s conduct does not form a “significant basis” for the Plaintiffs’ claims. *See Fulgenzi*, 2014 WL 11497836 at *4 (“Where the complaint contains no information about the local defendant’s conduct relative to the other defendants’ conduct, the plaintiff fails to meet the requirement.”) (citing *Opelousas Gen. Hosp. Auth. v. FairPay Solutions, Inc.*, 655 F.3d 358 (5th Cir. 2011)). Plaintiffs have not alleged a significant basis for their claims against LHS.

d. CAFA’s “Home State” Exception Does Not Apply

3.15 The “home state” exception under 28 U.S.C § 1332(d)(4)(B) also does not apply because all primary defendants must be New Mexico citizens, which APP is not. The plain text of USC § 1332(d)(4)(B), using the definite article before the plural nouns, requires that all primary defendants be citizens of New Mexico. Had Congress desired the opposite, it would have used “a” and the singular, or no article. There is no tension between this plain language and the legislative history, which explains that the exception is not meant to create a loophole whereby plaintiffs can avoid CAFA jurisdiction. *See Anthony v. Small Tub Manufacturing Corp.*, 535 F.Supp. 2d 506, 515 (E.D. Pa. 2007) (applying analysis to “home state” exception in Section 1332(d)(4)(B) and concluding “as evident for the statute’s use of the phrase ‘*the* primary defendants’ rather than ‘*a*’ primary defendant, the plain language of the statute requires remand only when *all* of the primary defendants are residents of the same state in which the action was originally filed”) (emphasis in original; internal quotations omitted).

e. The “Interests of Justice” Exception Does Not Apply

3.16 Finally, the “interests of justice” exception does not apply because Plaintiffs cannot meet their burden to establish that the class is on “:in which greater than one-third but less than two thirds of the members” are citizens of New Mexico; and (2) the primary defendants are “citizens” of New Mexico. *See* 28 U.S.C. § 1332(d)(3). First, the class definition itself is insufficient to allow the court to draw conclusions about the citizenship of class members, and therefore, Plaintiffs have not satisfied their burden to establish that at least one-third of the proposed Plaintiff Class Members are New Mexico citizens. *See* Ex. A, Compl. ¶¶ 1 and 93. Second, as discussed above, the reference to “the primary defendants” requires that all primary defendants be citizens of New Mexico, which is not the case here. As such, the “interests of justice” exception is inapplicable.

C. Consent is Not Required

3.17 Consent for Lovelace is not required under 28 U.S.C. § 1453(b). However, Lovelace consents to removal.

IV. PRAYER

APP respectfully requests that the United States District Court for the District of New Mexico accept this Notice of Removal, assume jurisdiction of this cause, and grant such other and further relief as to which APP may be justly entitled.

Respectfully submitted,

QUINTAIROS, PRIETO, WOOD & BOYER, P.A.

By: /s/ Frank Alvarez
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**ATTORNEY FOR DEFENDANT APP OF NEW
MEXICO ED, PLLC**

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of March 2020, a true and correct copy of APP of New Mexico ED, PLLC's Notice of Removal was served upon all counsel of record pursuant to the Federal Rules of Civil Procedure and through the CM/ECF system which caused all parties or counsel of record to be served by electronic means.

/s/ Frank Alvarez
FRANK ALVAREZ

STATE OF NEW MEXICO
BERNALILLO COUNTY
SECOND JUDICIAL DISTRICT

FILED
2nd JUDICIAL DISTRICT COURT
Bernalillo County
2/11/2020 11:47 AM
James A. Noel
CLERK OF THE COURT
Catherine Chavez

BRIAN LAX,
TRACY BURON-HAHNLEIN,
WERNER HAHNLEIN, and
JEREMY HADER,
on their own behalf and
on behalf of all others similarly situated

Plaintiffs,

v.

No. D-202-CV-2020-01090

APP OF NEW MEXICO ED, PLLC,
f/k/a ALIGNMD OF NEW MEXICO, PLLC, and
LOVELACE HEALTH SYSTEM, LLC,

Defendants.

CLASS ACTION COMPLAINT FOR DAMAGES

1. Defendants systematically overbilled Plaintiffs and many other New Mexicans for medical services, often by hundreds of dollars per visit.
2. Defendant APP of New Mexico ED, PLLC, is an emergency room staffing company. Defendant Lovelace Health Systems, LLC owns a group of hospitals that use APP to provide emergency room doctors and nurse practitioners.
3. Plaintiffs seek remedies for themselves and the many other consumers who were damaged by Defendants' deceptive practices.
4. Plaintiffs assert causes of action for Defendants' violations of the New Mexico Unfair Practices Act ("UPA"), NMSA §§ 57-12-1 *et seq.*, and for conversion, willful breach of contract, unjust enrichment, and civil conspiracy.

Parties

5. Plaintiff Brian Lax is a resident of Albuquerque, New Mexico.
6. Plaintiff Tracy Buron-Hahnlein is a resident of Albuquerque, New Mexico.
7. Plaintiff Werner Hahnlein is a resident of Albuquerque, New Mexico.
8. Plaintiff Jeremy Hader is a resident of Albuquerque, New Mexico.
9. Defendant APP of New Mexico ED, PLLC (“APP”) is a foreign limited liability company. It previously operated under the name AlignMD of New Mexico, PLLC.
10. Defendant Lovelace Health System, LLC (“Lovelace”) is a domestic limited liability company.

Relationship Between APP and Lovelace

11. Defendant Lovelace Health System, LLC, owns and operates 7 hospitals, 26 clinics, and 5 emergency rooms around the state of New Mexico.
12. These facilities include the Lovelace Medical Center, Lovelace Women’s Hospital, the Heart Hospital, and their emergency rooms.
13. Lovelace entered into a business relationship with Defendant APP of New Mexico ED, PLLC, under which APP provides emergency room physician and nurse practitioner staffing for Lovelace facilities.
14. Lovelace and APP bill separately for the services they provide patients, even for services provided during the same visit.
15. Many patients’ health insurance plans identify certain health care providers as “in-network,” meaning that those providers have entered into a contract with the insurance plan agreeing to accept the insurance plan’s negotiated rates.
16. Lovelace holds out to the public that it is an in-network provider for numerous

insurance plans, including Blue Cross Blue Shield.

17. As part of Lovelace and APP's formal business agreement and APP's contracts with major insurers, APP agrees to accept in-network reimbursement rates for medical services by its employees, in situations where Lovelace is an in-network provider.
18. Lovelace does not advertise to the public that many of its services are provided by third parties such as APP.
19. Lovelace does not disclose to its patients whether they are being treated by Lovelace or APP employees.
20. Lovelace does not state to its patients that they may end up paying more than the in-network rate for services provided by APP employees. This is because ostensibly, Lovelace takes the position that such overbilling should not be taking place.
21. However, Lovelace benefits from APP's overbilling, as described herein.
22. Lovelace and APP are part of a joint enterprise for the purpose of providing emergency room services for profit, including, upon information and belief, a profit sharing arrangement.
23. Lovelace and APP agreed to share their money, property, employees, and time in pursuit of their emergency room business. They share the profits and losses of the business and they are subject to mutual control over the business.
24. Lovelace and APP acted as one another's agents in the conduct described, and they are liable for each other's misconduct.
25. As set forth herein, Lovelace and APP authorized, participated in, and ratified each other's misconduct.

APP Overbills Brian Lax

26. On January 21, 2018, Plaintiff Brian Lax felt tightness in his chest while he was walking his dog.
27. Mr. Lax went to the Heart Hospital emergency room because he knew that Lovelace was an in-network provider with his Blue Cross Blue Shield health insurance, and because he felt that Heart Hospital would provide a higher level of care as compared to St. Vincent Hospital in Santa Fe.
28. Mr. Lax provided Lovelace with his insurance information.
29. The hospital administered several tests, which indicated that Mr. Lax had not suffered a heart attack.
30. Mr. Lax was released the same day.
31. Among the medical professionals who provided services to Mr. Lax was Dr. David Williams, MD.
32. Dr. Williams is an employee of APP.
33. No one at Lovelace disclosed to Mr. Lax that Dr. Williams was an employee of APP, or stated that Mr. Lax might receive a separate bill for Dr. Williams' services.
34. Shortly after Mr. Lax's emergency room visit, APP billed Mr. Lax's insurance at the out-of-network rate of \$1,484, including \$1,367 for Dr. Williams' services.
35. Mr. Lax's insurance informed both APP and Mr. Lax that it would only reimburse APP at in-network rates.
36. Mr. Lax's insurance sent him a check for the in-network amount, \$526.33.
37. Although APP was aware of the in-network amount to which it was entitled, it immediately began sending Mr. Lax bills for the full out-of-network amount.

- 38. Mr. Lax paid APP the \$526.33.
- 39. APP continued its efforts to collect the full amount from Mr. Lax, eventually sending his account to a collection agency, Wakefield and Associates (“Wakefield”).
- 40. Although Mr. Lax did not believe that he owed this amount, he eventually paid Wakefield the full out-of-network amount in order to protect his credit and to avoid further collection action.
- 41. In the 5 months since Mr. Lax paid APP, it has taken no action to refund any amounts to which it was not entitled.
- 42. Wakefield has continued to report the account as unpaid on Mr. Lax’s credit report.

APP Overbills Tracy Buron-Hahnlein

- 43. On February 5, 2018, Plaintiff Tracy Buron-Hahnlein experienced symptoms that made her concerned that she was having a heart attack.
- 44. Ms. Buron-Hahnlein went to the Lovelace Medical Center emergency room because she knew that Lovelace was an in-network provider with her Blue Cross Blue Shield health insurance.
- 45. Ms. Buron-Hahnlein provided Lovelace with her insurance information.
- 46. Ms. Buron-Hahnlein spent a few hours at the emergency room, where she received an EKG and had her blood drawn.
- 47. Fortunately, Ms. Buron-Hahnlein had not suffered a heart attack, and she was released the same day.
- 48. Among the medical professionals who provided services to Ms. Buron-Hahnlein was nurse practitioner Jennifer Dicecco.
- 49. Ms. Dicecco is an employee of APP.

50. No one at Lovelace disclosed to Ms. Buron-Hahnlein that Ms. Dicecco was an employee of APP, or suggested that Ms. Buron-Hahnlein might receive a separate bill for Ms. Dicecco's services.
51. Shortly after Ms. Buron-Hahnlein's emergency room visit, APP billed Ms. Buron-Hahnlein's insurance at the out-of-network rate of \$1,047.18, including \$923 for Ms. Dicecco's services.
52. Ms. Buron-Hahnlein's insurance informed both APP and Ms. Buron-Hahnlein that it would only reimburse APP at in-network rates.
53. Ms. Buron-Hahnlein's insurance sent her a check for the in-network amount, \$115.04.
54. Although APP was aware of the in-network amount to which it was entitled, it immediately began sending Ms. Buron-Hahnlein bills for the full out-of-network amount.
55. Ms. Buron-Hahnlein delayed paying this amount because she did not believe that she owed it.
56. APP continued its efforts to collect from Ms. Buron-Hahnlein, eventually sending her account to a collection agency, Wakefield and Associates ("Wakefield").
57. Although Ms. Buron-Hahnlein did not believe that she owed this amount, she eventually paid Wakefield the full out-of-network amount of \$1,047.18 in order to protect her credit and avoid further collection action.
58. In the 8 months since Ms. Buron-Hahnlein paid APP, it has taken no action to refund any amounts to which it was not entitled.

59. In addition to the hospital visit just described, Ms. Buron-Hahnlein had several additional hospital visits involving the same pattern of overbilling by APP.

APP Overbills Werner Hahnlein

60. On January 30, 2018, Plaintiff Werner Hahnlein felt tightness in his chest and had difficulty breathing. He was concerned that he was having a heart attack.
61. Mr. Hahnlein went to the Lovelace Women's Hospital emergency room because he knew that Lovelace was an in-network provider with his health insurance, Blue Cross Blue Shield.
62. Mr. Hahnlein provided Lovelace with his insurance information.
63. Mr. Hahnlein underwent medical tests in the emergency room and later the same day in the main hospital.
64. Mr. Hahnlein was advised to seek immediate follow-up appointments with cardiac specialists, and he was then discharged the same day.
65. Among the medical professionals who provided services to Mr. Hahnlein was Dr. Paul Mikkelsen, MD.
66. Dr. Mikkelsen is an employee of APP.
67. No one at Lovelace disclosed to Mr. Hahnlein that Dr. Mikkelsen was an employee of APP, or suggested that Mr. Hahnlein might receive a separate bill for Dr. Mikkelsen's services.
68. APP billed Mr. Hahnlein's insurance at the out-of-network rate of \$1,433, including \$1,367 for Dr. Mikkelsen's services.
69. Mr. Hahnlein's insurance informed both APP and Mr. Hahnlein that it would only reimburse APP based on in-network rates.

- 70. Mr. Hahnlein's insurance sent him a check for \$166.29.
- 71. Although APP was aware of the in-network amount to which it was entitled, it immediately began sending Mr. Hahnlein bills for the full out-of-network amount.
- 72. Mr. Hahnlein delayed paying this amount because he did not believe that he owed it.
- 73. APP continued its efforts to collect from Mr. Hahnlein, eventually sending his account to a collection agency, Wakefield and Associates ("Wakefield").
- 74. Wakefield sent dunning letters to Mr. Hahnlein.
- 75. Wakefield placed derogatory information in Mr. Hahnlein's credit reports.

APP Overbills Jeremy Hader

- 76. On April 2, 2018, Plaintiff Jeremy Hader experienced chest pain and difficulty breathing.
- 77. Mr. Hader went to the Heart Hospital emergency room because he knew that Heart Hospital was an in-network provider with his health insurance.
- 78. Mr. Hader had Blue Cross Blue Shield insurance.
- 79. Mr. Hader provided Heart Hospital with his insurance information.
- 80. Mr. Hader was treated and released the same day.
- 81. Among the medical professionals who provided services to Mr. Hader was Dr. Fred Ginsburg, MD.
- 82. Mr. Hader met briefly with Dr. Ginsburg.
- 83. Dr. Ginsburg is an employee of APP.
- 84. No one at Heart Hospital disclosed to Mr. Hader that Dr. Ginsburg was an employee of APP, or suggested that Mr. Hader might receive a separate bill for Dr. Ginsburg's services.

85. APP billed Mr. Hader's insurance at the out-of-network rate of \$1,433, including \$1,367 for Dr. Ginsburg's services.
86. Mr. Hader's insurance informed both APP and Mr. Hader that it would only reimburse APP at in-network rates.
87. Mr. Hader's insurance sent him a check for the in-network amount, \$521.41.
88. Although APP was aware of the in-network amount to which it was entitled, it immediately began sending Mr. Hader bills for the full out-of-network amount.
89. Paying the full amount would have caused Mr. Hader financial distress, and he did not believe that should be billed this amount.
90. APP continued its efforts to collect from Mr. Hader, eventually sending his account to a collection agency, Wakefield and Associates ("Wakefield").
91. Wakefield sent dunning letters to Mr. Hader.
92. Wakefield placed derogatory information in Mr. Hader's credit reports.

Plaintiffs Bring this Case as a Class Action

93. Plaintiffs are the representatives of a class of all New Mexico residents who, beginning four years prior to the filing date of this lawsuit, were billed by APP for amounts greater than the in-network amount permitted by their insurance provider for medical services provided at Lovelace facilities.
94. The class is so numerous that joinder of all members is impracticable. Plaintiffs believe the number of members of the class exceeds 1,000 persons.
95. This action is based on standard methods of Defendants, who engaged in the uniform practice of overbilling customers as set forth herein.
96. The issues involve questions of law or fact common to the class, which Plaintiffs

have recited in detail throughout this Complaint. These questions predominate over any questions affecting only individual class members. The common questions include:

- a. Whether APP had the right to bill for amounts greater than the in-network amount permitted by class members' insurance providers for medical services provided at Lovelace facilities.
- b. Whether Defendants' standard overbilling practices violated the UPA;
- c. Whether Defendants' conduct constituted conversion;
- d. Whether Defendants' conduct constituted willful breach of contract; and
- e. Whether Defendants' conduct constituted unjust enrichment.

97. Plaintiffs' claims are typical of those of the class members. All claims are based on the same factual and legal theories. All claims arise from the same form documents, contracts, and uniform business practices.

98. Plaintiffs will fairly and adequately represent the class. Plaintiffs are committed to litigating this matter. They have retained counsel experienced in handling class claims and claims involving unlawful business practices. Neither Plaintiffs nor class counsel have any interests which might cause them not to pursue this claim vigorously.

99. A class action is superior for the fair and efficient adjudication of the class members' claims. Class members are unaware of the fact that their rights have been violated. Defendants' customers cannot generally afford counsel to engage in individual litigation against Defendants. A failure of justice will result in the absence of a class action.

First Claim for Relief: Violations of the Unfair Practices Act

100. Defendants' overbilling of Plaintiffs, and every overbilling transaction with class members, violated the UPA, constituting both an unfair and deceptive trade practice and an unconscionable trade practice.
101. Defendants' overbilling was carried out in the regular course of their trade or commerce.
102. Defendants willfully engaged in the illegal conduct alleged.
103. Class members sustained damages as a result of Defendants' violations of the UPA.
104. Defendants are each directly liable; are liable for aiding, abetting, participating in, and ratifying in the other parties' misconduct; are vicariously liable for each other's misconduct; and are liable as members of a joint enterprise.
105. Plaintiffs and each member of the class are entitled to actual damages plus costs and attorney fees. NMSA § 57-12-10.
106. In addition, Plaintiffs and each member of the class are entitled to injunctive relief, barring Defendants continuing to engage in overbilling, ordering them to cease all collection efforts by themselves or third parties under their control for amounts they are not owed, and requiring Defendants to correct any inaccurate credit reporting resulting from their violations of the law.

Second Claim for Relief: Conversion

107. When Defendants collected money Plaintiffs and each member of the class above what was owed, Defendants unlawfully exercised dominion and control over Plaintiffs' property in exclusion or defiance of their rights.
108. Plaintiffs and each member of the class were damaged by Defendants' conduct.

- 109. Defendants' conduct was malicious, willful, wanton, fraudulent, and in bad faith.
- 110. Defendants are each directly liable; are liable for aiding, abetting, participating in, and ratifying in the other parties' misconduct; are vicariously liable for each other's misconduct; and are liable as members of a joint enterprise.
- 111. Plaintiffs and each member of the class are entitled to actual and punitive damages.

Third Claim for Relief: Willful Breach of Contract

- 112. Plaintiffs and all members of the class entered into contracts with Defendants, as provided above.
- 113. Defendants breached the contracts by collecting amounts not permitted by contract.
- 114. Plaintiffs and each member of the class were damaged by Defendants' conduct.
- 115. Defendants' breach of contract was malicious, willful, wanton, fraudulent, and in bad faith.
- 116. Defendants' conduct constituted a breach of the covenant of good faith and fair dealing implicit in all contracts.
- 117. Defendants are each directly liable; are liable for aiding, abetting, participating in, and ratifying in the other parties' misconduct; are vicariously liable for each other's misconduct; and are liable as members of a joint enterprise.
- 118. Plaintiffs are entitled to actual and punitive damages.

Fourth Claim for Relief: Unjust Enrichment

- 119. Defendants knowingly benefitted at the expense of Plaintiffs and all other class members.
- 120. Allowing Defendants to retain the benefit would be unjust.
- 121. Defendants are each directly liable; are liable for aiding, abetting, participating in,

and ratifying in the other parties' misconduct; are vicariously liable for each other's misconduct; and are liable as members of a joint enterprise.

122. Defendants should be ordered to disgorge all benefits resulting from their misconduct.

Fifth Claim for Relief: Civil Conspiracy

123. A conspiracy existed between Defendants.

124. The wrongful acts described herein were carried out pursuant to the conspiracy.

125. As a result, Plaintiffs suffered damages.

126. Each Defendant is liable for legal violations of the others, as set forth above.

Prayer for Relief

WHEREFORE, Plaintiffs pray that this Court:

- A. Certify this case as a class action, appoint Plaintiffs as class representatives, and appoint counsel to represent the class;
- B. Award actual, statutory, treble and punitive damages as provided herein;
- C. Award injunctive relief as provided herein;
- D. Award reasonable attorney's fees and costs;
- E. Find Defendants to be jointly and severally liable for all damages, attorney's fees, and costs awarded; and
- F. Grant such further relief that is just and reasonable under the circumstances.

Respectfully submitted,

/s/Nicholas H. Mattison

Nicholas H. Mattison

Richard N. Feferman

Feferman, Warren & Mattison, Attorneys for Plaintiff

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Location : All Courts [Images](#)**REGISTER OF ACTIONS****CASE NO. D-202-CV-2020-01090**

Brian Lax, et al., v. App of New Mexico Ed PLLC, et al.

§
§
§
§
§
§

Case Type: **Civil Violations, Statutes, Ordinances**
 Date Filed: **02/11/2020**
 Location:
 Judicial Officer: **Lopez, Victor S.**

PARTY INFORMATION

		Attorneys
Defendant	App of New Mexico Ed PLLC <i>Formerly Known As</i> AlignMD of New Mexico PLLC	
Defendant	Lovelace Health System LLC	
Plaintiff	Buron-Hahnlein, Tracy	Nicholas H. Mattison <i>Retained</i> 505-243-7773(W)
		David C. Kramer <i>Retained</i> 505-545-8105(W)
Plaintiff	Hader, Jeremy	Nicholas H. Mattison <i>Retained</i> 505-243-7773(W)
		David C. Kramer <i>Retained</i> 505-545-8105(W)
Plaintiff	Hahnlein, Werner	Nicholas H. Mattison <i>Retained</i> 505-243-7773(W)
		David C. Kramer <i>Retained</i> 505-545-8105(W)
Plaintiff	Lax, Brian	Nicholas H. Mattison <i>Retained</i> 505-243-7773(W)
		David C. Kramer <i>Retained</i> 505-545-8105(W)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS			
02/11/2020	Cause Of Actions	Trade Practices Act	
	Action Type	Action	
02/11/2020	Cause Of Actions	Breach of Contract	
	Action Type	Action	
02/11/2020	Cause Of Actions	Other Damages	
	Action Type	Action	
02/11/2020	OPN: COMPLAINT		
02/11/2020	ARB: CERT NOT SUBJECT		
02/12/2020	Summons		
	App of New Mexico Ed PLLC	Served	02/21/2020
		Response Due	03/23/2020
		Returned	03/11/2020
	Lovelace Health System LLC	Served	02/21/2020
		Response Due	03/23/2020
		Returned	03/11/2020

03/11/2020 | [SUMMONS RETURN](#)
03/11/2020 | [SUMMONS RETURN](#)

FINANCIAL INFORMATION				
Plaintiff Lax, Brian				
Total Financial Assessment				132.00
Total Payments and Credits				132.00
Balance Due as of 03/23/2020				0.00
02/11/2020	Transaction Assessment			132.00
02/11/2020	File & Serve Payment	Receipt # ALBD-2020-3932	Lax, Brian	(132.00)

STATE OF NEW MEXICO
BERNALILLO COUNTY
SECOND JUDICIAL DISTRICT

FILED
2nd JUDICIAL DISTRICT COURT
Bernalillo County
2/11/2020 11:47 AM
James A. Noel
CLERK OF THE COURT
Catherine Chavez

BRIAN LAX,
TRACY BURON-HAHNLEIN,
WERNER HAHNLEIN, and
JEREMY HADER,
on their own behalf and
on behalf of all others similarly situated

Plaintiffs,

v.

No. D-202-CV-2020-01090

APP OF NEW MEXICO ED, PLLC,
f/k/a ALIGNMD OF NEW MEXICO, PLLC, and
LOVELACE HEALTH SYSTEM, LLC,

Defendants.

CLASS ACTION COMPLAINT FOR DAMAGES

1. Defendants systematically overbilled Plaintiffs and many other New Mexicans for medical services, often by hundreds of dollars per visit.
2. Defendant APP of New Mexico ED, PLLC, is an emergency room staffing company. Defendant Lovelace Health Systems, LLC owns a group of hospitals that use APP to provide emergency room doctors and nurse practitioners.
3. Plaintiffs seek remedies for themselves and the many other consumers who were damaged by Defendants' deceptive practices.
4. Plaintiffs assert causes of action for Defendants' violations of the New Mexico Unfair Practices Act ("UPA"), NMSA §§ 57-12-1 *et seq.*, and for conversion, willful breach of contract, unjust enrichment, and civil conspiracy.

Parties

5. Plaintiff Brian Lax is a resident of Albuquerque, New Mexico.
6. Plaintiff Tracy Buron-Hahnlein is a resident of Albuquerque, New Mexico.
7. Plaintiff Werner Hahnlein is a resident of Albuquerque, New Mexico.
8. Plaintiff Jeremy Hader is a resident of Albuquerque, New Mexico.
9. Defendant APP of New Mexico ED, PLLC (“APP”) is a foreign limited liability company. It previously operated under the name AlignMD of New Mexico, PLLC.
10. Defendant Lovelace Health System, LLC (“Lovelace”) is a domestic limited liability company.

Relationship Between APP and Lovelace

11. Defendant Lovelace Health System, LLC, owns and operates 7 hospitals, 26 clinics, and 5 emergency rooms around the state of New Mexico.
12. These facilities include the Lovelace Medical Center, Lovelace Women’s Hospital, the Heart Hospital, and their emergency rooms.
13. Lovelace entered into a business relationship with Defendant APP of New Mexico ED, PLLC, under which APP provides emergency room physician and nurse practitioner staffing for Lovelace facilities.
14. Lovelace and APP bill separately for the services they provide patients, even for services provided during the same visit.
15. Many patients’ health insurance plans identify certain health care providers as “in-network,” meaning that those providers have entered into a contract with the insurance plan agreeing to accept the insurance plan’s negotiated rates.
16. Lovelace holds out to the public that it is an in-network provider for numerous

insurance plans, including Blue Cross Blue Shield.

17. As part of Lovelace and APP's formal business agreement and APP's contracts with major insurers, APP agrees to accept in-network reimbursement rates for medical services by its employees, in situations where Lovelace is an in-network provider.
18. Lovelace does not advertise to the public that many of its services are provided by third parties such as APP.
19. Lovelace does not disclose to its patients whether they are being treated by Lovelace or APP employees.
20. Lovelace does not state to its patients that they may end up paying more than the in-network rate for services provided by APP employees. This is because ostensibly, Lovelace takes the position that such overbilling should not be taking place.
21. However, Lovelace benefits from APP's overbilling, as described herein.
22. Lovelace and APP are part of a joint enterprise for the purpose of providing emergency room services for profit, including, upon information and belief, a profit sharing arrangement.
23. Lovelace and APP agreed to share their money, property, employees, and time in pursuit of their emergency room business. They share the profits and losses of the business and they are subject to mutual control over the business.
24. Lovelace and APP acted as one another's agents in the conduct described, and they are liable for each other's misconduct.
25. As set forth herein, Lovelace and APP authorized, participated in, and ratified each other's misconduct.

APP Overbills Brian Lax

26. On January 21, 2018, Plaintiff Brian Lax felt tightness in his chest while he was walking his dog.
27. Mr. Lax went to the Heart Hospital emergency room because he knew that Lovelace was an in-network provider with his Blue Cross Blue Shield health insurance, and because he felt that Heart Hospital would provide a higher level of care as compared to St. Vincent Hospital in Santa Fe.
28. Mr. Lax provided Lovelace with his insurance information.
29. The hospital administered several tests, which indicated that Mr. Lax had not suffered a heart attack.
30. Mr. Lax was released the same day.
31. Among the medical professionals who provided services to Mr. Lax was Dr. David Williams, MD.
32. Dr. Williams is an employee of APP.
33. No one at Lovelace disclosed to Mr. Lax that Dr. Williams was an employee of APP, or stated that Mr. Lax might receive a separate bill for Dr. Williams' services.
34. Shortly after Mr. Lax's emergency room visit, APP billed Mr. Lax's insurance at the out-of-network rate of \$1,484, including \$1,367 for Dr. Williams' services.
35. Mr. Lax's insurance informed both APP and Mr. Lax that it would only reimburse APP at in-network rates.
36. Mr. Lax's insurance sent him a check for the in-network amount, \$526.33.
37. Although APP was aware of the in-network amount to which it was entitled, it immediately began sending Mr. Lax bills for the full out-of-network amount.

- 38. Mr. Lax paid APP the \$526.33.
- 39. APP continued its efforts to collect the full amount from Mr. Lax, eventually sending his account to a collection agency, Wakefield and Associates (“Wakefield”).
- 40. Although Mr. Lax did not believe that he owed this amount, he eventually paid Wakefield the full out-of-network amount in order to protect his credit and to avoid further collection action.
- 41. In the 5 months since Mr. Lax paid APP, it has taken no action to refund any amounts to which it was not entitled.
- 42. Wakefield has continued to report the account as unpaid on Mr. Lax’s credit report.

APP Overbills Tracy Buron-Hahnlein

- 43. On February 5, 2018, Plaintiff Tracy Buron-Hahnlein experienced symptoms that made her concerned that she was having a heart attack.
- 44. Ms. Buron-Hahnlein went to the Lovelace Medical Center emergency room because she knew that Lovelace was an in-network provider with her Blue Cross Blue Shield health insurance.
- 45. Ms. Buron-Hahnlein provided Lovelace with her insurance information.
- 46. Ms. Buron-Hahnlein spent a few hours at the emergency room, where she received an EKG and had her blood drawn.
- 47. Fortunately, Ms. Buron-Hahnlein had not suffered a heart attack, and she was released the same day.
- 48. Among the medical professionals who provided services to Ms. Buron-Hahnlein was nurse practitioner Jennifer Dicecco.
- 49. Ms. Dicecco is an employee of APP.

50. No one at Lovelace disclosed to Ms. Buron-Hahnlein that Ms. Dicecco was an employee of APP, or suggested that Ms. Buron-Hahnlein might receive a separate bill for Ms. Dicecco's services.
51. Shortly after Ms. Buron-Hahnlein's emergency room visit, APP billed Ms. Buron-Hahnlein's insurance at the out-of-network rate of \$1,047.18, including \$923 for Ms. Dicecco's services.
52. Ms. Buron-Hahnlein's insurance informed both APP and Ms. Buron-Hahnlein that it would only reimburse APP at in-network rates.
53. Ms. Buron-Hahnlein's insurance sent her a check for the in-network amount, \$115.04.
54. Although APP was aware of the in-network amount to which it was entitled, it immediately began sending Ms. Buron-Hahnlein bills for the full out-of-network amount.
55. Ms. Buron-Hahnlein delayed paying this amount because she did not believe that she owed it.
56. APP continued its efforts to collect from Ms. Buron-Hahnlein, eventually sending her account to a collection agency, Wakefield and Associates ("Wakefield").
57. Although Ms. Buron-Hahnlein did not believe that she owed this amount, she eventually paid Wakefield the full out-of-network amount of \$1,047.18 in order to protect her credit and avoid further collection action.
58. In the 8 months since Ms. Buron-Hahnlein paid APP, it has taken no action to refund any amounts to which it was not entitled.

59. In addition to the hospital visit just described, Ms. Buron-Hahnlein had several additional hospital visits involving the same pattern of overbilling by APP.

APP Overbills Werner Hahnlein

60. On January 30, 2018, Plaintiff Werner Hahnlein felt tightness in his chest and had difficulty breathing. He was concerned that he was having a heart attack.

61. Mr. Hahnlein went to the Lovelace Women's Hospital emergency room because he knew that Lovelace was an in-network provider with his health insurance, Blue Cross Blue Shield.

62. Mr. Hahnlein provided Lovelace with his insurance information.

63. Mr. Hahnlein underwent medical tests in the emergency room and later the same day in the main hospital.

64. Mr. Hahnlein was advised to seek immediate follow-up appointments with cardiac specialists, and he was then discharged the same day.

65. Among the medical professionals who provided services to Mr. Hahnlein was Dr. Paul Mikkelsen, MD.

66. Dr. Mikkelsen is an employee of APP.

67. No one at Lovelace disclosed to Mr. Hahnlein that Dr. Mikkelsen was an employee of APP, or suggested that Mr. Hahnlein might receive a separate bill for Dr. Mikkelsen's services.

68. APP billed Mr. Hahnlein's insurance at the out-of-network rate of \$1,433, including \$1,367 for Dr. Mikkelsen's services.

69. Mr. Hahnlein's insurance informed both APP and Mr. Hahnlein that it would only reimburse APP based on in-network rates.

- 70. Mr. Hahnlein's insurance sent him a check for \$166.29.
- 71. Although APP was aware of the in-network amount to which it was entitled, it immediately began sending Mr. Hahnlein bills for the full out-of-network amount.
- 72. Mr. Hahnlein delayed paying this amount because he did not believe that he owed it.
- 73. APP continued its efforts to collect from Mr. Hahnlein, eventually sending his account to a collection agency, Wakefield and Associates ("Wakefield").
- 74. Wakefield sent dunning letters to Mr. Hahnlein.
- 75. Wakefield placed derogatory information in Mr. Hahnlein's credit reports.

APP Overbills Jeremy Hader

- 76. On April 2, 2018, Plaintiff Jeremy Hader experienced chest pain and difficulty breathing.
- 77. Mr. Hader went to the Heart Hospital emergency room because he knew that Heart Hospital was an in-network provider with his health insurance.
- 78. Mr. Hader had Blue Cross Blue Shield insurance.
- 79. Mr. Hader provided Heart Hospital with his insurance information.
- 80. Mr. Hader was treated and released the same day.
- 81. Among the medical professionals who provided services to Mr. Hader was Dr. Fred Ginsburg, MD.
- 82. Mr. Hader met briefly with Dr. Ginsburg.
- 83. Dr. Ginsburg is an employee of APP.
- 84. No one at Heart Hospital disclosed to Mr. Hader that Dr. Ginsburg was an employee of APP, or suggested that Mr. Hader might receive a separate bill for Dr. Ginsburg's services.

85. APP billed Mr. Hader's insurance at the out-of-network rate of \$1,433, including \$1,367 for Dr. Ginsburg's services.
86. Mr. Hader's insurance informed both APP and Mr. Hader that it would only reimburse APP at in-network rates.
87. Mr. Hader's insurance sent him a check for the in-network amount, \$521.41.
88. Although APP was aware of the in-network amount to which it was entitled, it immediately began sending Mr. Hader bills for the full out-of-network amount.
89. Paying the full amount would have caused Mr. Hader financial distress, and he did not believe that should be billed this amount.
90. APP continued its efforts to collect from Mr. Hader, eventually sending his account to a collection agency, Wakefield and Associates ("Wakefield").
91. Wakefield sent dunning letters to Mr. Hader.
92. Wakefield placed derogatory information in Mr. Hader's credit reports.

Plaintiffs Bring this Case as a Class Action

93. Plaintiffs are the representatives of a class of all New Mexico residents who, beginning four years prior to the filing date of this lawsuit, were billed by APP for amounts greater than the in-network amount permitted by their insurance provider for medical services provided at Lovelace facilities.
94. The class is so numerous that joinder of all members is impracticable. Plaintiffs believe the number of members of the class exceeds 1,000 persons.
95. This action is based on standard methods of Defendants, who engaged in the uniform practice of overbilling customers as set forth herein.
96. The issues involve questions of law or fact common to the class, which Plaintiffs

have recited in detail throughout this Complaint. These questions predominate over any questions affecting only individual class members. The common questions include:

- a. Whether APP had the right to bill for amounts greater than the in-network amount permitted by class members' insurance providers for medical services provided at Lovelace facilities.
- b. Whether Defendants' standard overbilling practices violated the UPA;
- c. Whether Defendants' conduct constituted conversion;
- d. Whether Defendants' conduct constituted willful breach of contract; and
- e. Whether Defendants' conduct constituted unjust enrichment.

97. Plaintiffs' claims are typical of those of the class members. All claims are based on the same factual and legal theories. All claims arise from the same form documents, contracts, and uniform business practices.

98. Plaintiffs will fairly and adequately represent the class. Plaintiffs are committed to litigating this matter. They have retained counsel experienced in handling class claims and claims involving unlawful business practices. Neither Plaintiffs nor class counsel have any interests which might cause them not to pursue this claim vigorously.

99. A class action is superior for the fair and efficient adjudication of the class members' claims. Class members are unaware of the fact that their rights have been violated. Defendants' customers cannot generally afford counsel to engage in individual litigation against Defendants. A failure of justice will result in the absence of a class action.

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100. Defendants' overbilling of Plaintiffs, and every overbilling transaction with class members, violated the UPA, constituting both an unfair and deceptive trade practice and an unconscionable trade practice.
101. Defendants' overbilling was carried out in the regular course of their trade or commerce.
102. Defendants willfully engaged in the illegal conduct alleged.
103. Class members sustained damages as a result of Defendants' violations of the UPA.
104. Defendants are each directly liable; are liable for aiding, abetting, participating in, and ratifying in the other parties' misconduct; are vicariously liable for each other's misconduct; and are liable as members of a joint enterprise.
105. Plaintiffs and each member of the class are entitled to actual damages plus costs and attorney fees. NMSA § 57-12-10.
106. In addition, Plaintiffs and each member of the class are entitled to injunctive relief, barring Defendants continuing to engage in overbilling, ordering them to cease all collection efforts by themselves or third parties under their control for amounts they are not owed, and requiring Defendants to correct any inaccurate credit reporting resulting from their violations of the law.

Second Claim for Relief: Conversion

107. When Defendants collected money Plaintiffs and each member of the class above what was owed, Defendants unlawfully exercised dominion and control over Plaintiffs' property in exclusion or defiance of their rights.
108. Plaintiffs and each member of the class were damaged by Defendants' conduct.

- 109. Defendants' conduct was malicious, willful, wanton, fraudulent, and in bad faith.
- 110. Defendants are each directly liable; are liable for aiding, abetting, participating in, and ratifying in the other parties' misconduct; are vicariously liable for each other's misconduct; and are liable as members of a joint enterprise.
- 111. Plaintiffs and each member of the class are entitled to actual and punitive damages.

Third Claim for Relief: Willful Breach of Contract

- 112. Plaintiffs and all members of the class entered into contracts with Defendants, as provided above.
- 113. Defendants breached the contracts by collecting amounts not permitted by contract.
- 114. Plaintiffs and each member of the class were damaged by Defendants' conduct.
- 115. Defendants' breach of contract was malicious, willful, wanton, fraudulent, and in bad faith.
- 116. Defendants' conduct constituted a breach of the covenant of good faith and fair dealing implicit in all contracts.
- 117. Defendants are each directly liable; are liable for aiding, abetting, participating in, and ratifying in the other parties' misconduct; are vicariously liable for each other's misconduct; and are liable as members of a joint enterprise.
- 118. Plaintiffs are entitled to actual and punitive damages.

Fourth Claim for Relief: Unjust Enrichment

- 119. Defendants knowingly benefitted at the expense of Plaintiffs and all other class members.
- 120. Allowing Defendants to retain the benefit would be unjust.
- 121. Defendants are each directly liable; are liable for aiding, abetting, participating in,

and ratifying in the other parties' misconduct; are vicariously liable for each other's misconduct; and are liable as members of a joint enterprise.

122. Defendants should be ordered to disgorge all benefits resulting from their misconduct.

Fifth Claim for Relief: Civil Conspiracy

123. A conspiracy existed between Defendants.

124. The wrongful acts described herein were carried out pursuant to the conspiracy.

125. As a result, Plaintiffs suffered damages.

126. Each Defendant is liable for legal violations of the others, as set forth above.

Prayer for Relief

WHEREFORE, Plaintiffs pray that this Court:

- A. Certify this case as a class action, appoint Plaintiffs as class representatives, and appoint counsel to represent the class;
- B. Award actual, statutory, treble and punitive damages as provided herein;
- C. Award injunctive relief as provided herein;
- D. Award reasonable attorney's fees and costs;
- E. Find Defendants to be jointly and severally liable for all damages, attorney's fees, and costs awarded; and
- F. Grant such further relief that is just and reasonable under the circumstances.

Respectfully submitted,

/s/Nicholas H. Mattison

Nicholas H. Mattison

Richard N. Feferman

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STATE OF NEW MEXICO
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SECOND JUDICIAL DISTRICT

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Plaintiffs,

v.

No. D-202-CV-2020-01090

APP OF NEW MEXICO ED, PLLC,
f/k/a ALIGNMD OF NEW MEXICO, PLLC, and
LOVELACE HEALTH SYSTEM, LLC,

Defendants.

COURT-ANNEXED ARBITRATION CERTIFICATION

Pursuant to the LR2-603 of the Local Rules of the Second Judicial District Court,
Plaintiffs certify as follows:

☐ This party seeks only a money judgment and the amount sought does not exceed
Twenty-Five Thousand Dollars (\$25,000.00), exclusive of punitive damages,
interest, costs, and attorney's fees.

☒ These parties seek relief other than a money judgment and/or seeks relief in
excess of Twenty-Five Thousand Dollars (\$25,000.00), exclusive of punitive
damages, interest, costs, and attorney's fees.

EXHIBIT B

Respectfully submitted,

/s/Nicholas H. Mattison

Nicholas H. Mattison

Richard N. Feferman

Feferman, Warren & Mattison, Attorneys for Plaintiff

300 Central Ave., SW, Suite 2000 West

Albuquerque, New Mexico 87102

(505) 243-7773 phone

(505) 243-6663 fax

nmattison@nmconsumerwarriors.com

rfeferman@msn.com

- and -

/s/ David C. Kramer

David C. Kramer, Esq.

Attorney for Plaintiff

P.O. Box 4662

Albuquerque, NM 87196

(505) 545-8105 phone

(505) 715-4884 fax

david.c.kramer@swcp.com

EXHIBIT B

RETURN

STATE OF NEW MEXICO)
)ss
 COUNTY OF Santa Fe)

I, being duly sworn, on oath, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in Santa Fe county on the 21 day of February, 2020, by delivering a copy of this summons, with a copy of complaint, arbitration certificate, Plaintiff's First Set of Discovery to Defendant App of New Mexico ED, PLLC, f/k/a ALIGNMD of New Mexico, PLLC and Plaintiff's First Set of Discovery to Defendant Lovelace Health System, LLC is attached, in the following manner:

(check one box and fill in appropriate blanks)

☐ to the defendant _____ (used when defendant accepts a copy of summons and complaint or refuses to accept the summons and complaint)

☐ to the defendant by [mail] [courier service] as provided by Rule 1-004 NMRA (used when service is by mail or commercial courier service).

After attempting to serve the summons and complaint on the defendant by personal service or by mail or commercial courier service, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

☐ to _____, a person over fifteen (15) years of age and residing at the usual place of abode of defendant _____, (used when the defendant is not presently at place of abode) and by mailing by first class mail to the defendant at _____ (insert defendant's last known mailing address) a copy of the summons and complaint.

☐ to _____, the person apparently in charge at the actual place of business or employment of the defendant and by mailing by first class mail to the defendant at _____ (insert defendant's business address) and by mailing the summons and complaint by first class mail to the defendant at _____ (insert defendant's last known mailing address).

☒ to Robert Ptasek Agent w/ Cogency Global Inc. Registered Agent, an agent authorized to receive service of process for defendant App of New Mexico ED, PLLC f/k/a ALIGNMD of New Mexico, PLLC

☐ to _____, [parent] [guardian] [custodian] [conservator] [guardian ad litem] of defendant _____ (used when defendant is a minor or an incompetent person).

☐ to _____ (name of person), _____, (title of person authorized to receive service. Use this alternative when the defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fees: \$75.91

EXHIBIT B

Manuel A. Munster
Signature of person making service

Title (if any)

Subscribed and sworn to before me this 21 day of February, 2020

Judge, notary or other officer
authorized to administer oaths

[Signature]
Official title

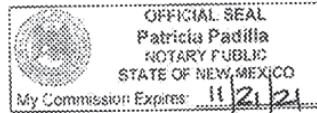


EXHIBIT B

FILED
2nd JUDICIAL DISTRICT COURT
Bernalillo County
3/11/2020 11:59 AM
CLERK OF THE COURT
Latoya Grayes

SUMMONS	
Second Judicial District Court: Bernalillo County, New Mexico Court Address: 400 Lomas Blvd NW, Albuquerque, NM 87102 Court Telephone No.: (505) 841-8400	Case Number: D-202-CV-2020-01090 Judge: Victor S. Lopez
Plaintiff(s): BRIAN LAX, TRACY BURON-HAHNLEIN, WERNER HAHNLEIN, and JEREMY HADER, on their own behalf and on behalf of all others similarly situated v. Defendant(s): APP OF NEW MEXICO ED, PLLC, f/k/a ALIGNMD OF NEW MEXICO, PLLC, and LOVELACE HEALTH SYSTEM, LLC	Defendant: Lovelace Health System, LLC c/o Corporation Service Company MC-CSC1, 726 E Michigan Dr, Ste. 101 Hobbs, NM 88240


TO THE ABOVE NAMED DEFENDANT(S): Take notice that

1. A lawsuit has been filed against you. A copy of the lawsuit, arbitration certificate, Plaintiff's First Set of Discovery to Defendant App of New Mexico ED, PLLC, f/k/a ALIGNMD of New Mexico, PLLC and Plaintiff's First Set of Discovery to Defendant Lovelace Health System, LLC is attached. The Court issued this Summons.
2. You must respond to this lawsuit in writing. You must file your written response with the Court no later than thirty (30) days from the date you are served with this Summons. (The date you are considered served with the Summons is determined by Rule 1-004 NMRA) The Court's address is listed above.
3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.
4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.
5. You are entitled to a jury trial in most types of lawsuits. To ask for a jury trial, you must request one in writing and pay a jury fee.
6. If you need an interpreter, you must ask for one in writing.
7. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at www.nmbar.org; 1-800-876-6657; or 1-505-797-6066.

Dated at _____, New Mexico, this ____ day of February 2020 2/12/2020



JAMES A. NOEL
CLERK OF THE DISTRICT COURT

By: 
Deputy Clerk

/s/ Nicholas H. Mattison
Nicholas H. Mattison, Attorney for Plaintiffs
300 Central Ave. SW, Ste. 2000W
Albuquerque, NM 87102
Telephone No.: 505-243-7773
Fax No.: 505-243-6663
nmattison@nmconsumerwarriors.com

THIS SUMMONS IS ISSUED PURSUANT TO RULE 1-004 OF THE NEW MEXICO RULES OF CIVIL PROCEDURE FOR DISTRICT COURTS

EXHIBIT B

RETURN

STATE OF NEW MEXICO)
)ss
COUNTY OF LEA)

I, being duly sworn, on oath, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in LEA county on the 21 day of FEB, 2020, by delivering a copy of this summons, with a copy of complaint, arbitration certificate, Plaintiff's First Set of Discovery to Defendant App of New Mexico ED, PLLC, f/k/a ALIGNMD of New Mexico, PLLC and Plaintiff's First Set of Discovery to Defendant Lovelace Health System, LLC is attached, in the following manner:

(check one box and fill in appropriate blanks)

☐ to the defendant _____ (used when defendant accepts a copy of summons and complaint or refuses to accept the summons and complaint)

[] to the defendant by [mail] [courier service] as provided by Rule 1-004 NMRA (used when service is by mail or commercial courier service).

After attempting to serve the summons and complaint on the defendant by personal service or by mail or commercial courier service, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

[] to _____, a person over fifteen (15) years of age and residing at the usual place of abode of defendant _____, (used when the defendant is not presently at place of abode) and by mailing by first class mail to the defendant at _____ (insert defendant's last known mailing address) a copy of the summons and complaint.

[] to _____, the person apparently in charge at the actual place of business or employment of the defendant and by mailing by first class mail to the defendant at _____ (insert defendant's business address) and by mailing the summons and complaint by first class mail to the defendant at _____ (insert defendant's last known mailing address).

mailing address).

☒ to LOUANNE SOTO, LEGAL ASSISTANT FOR CORP. SERVICE CO.,
LOVELACE HEALTH SYSTEM, LLC, an agent authorized to receive service of process for defendant

[] to _____, [parent] [guardian] [custodian] [conservator] [guardian ad litem] of
defendant _____ (used when defendant is a minor or an incompetent person).

[] to _____ (name of person), _____, (title of person authorized to receive service. Use this alternative when the defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fees: _____

EXHIBIT B

Signature of person making service

Chytrý Flyp
Title (if any)

Subscribed and sworn to before me this 21 day of February, 2020

Judge, notary or other officer
authorized to administer oaths

Ruby A. Hernandez De La Cruz
Official title

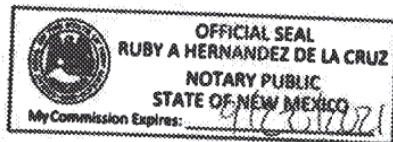


EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

BRIAN LAX, TRACY BURON-HAHNLEIN, §
WERNER HAHNLEIN, AND JEREMY §
HADER, ON THEIR OWN BEHALF AND §
ON BEHALF OF ALL OTHERS §
SIMILARLY SITUATED, §

Plaintiffs,

Cause No. _____

v.

APP OF NEW MEXICO ED, PLLC, §
f/k/a ALIGNED OF NEW MEXICO, §
PLLC, and LOVELACE HEALTH §
SYSTEM, LLC, §

Defendants.

DECLARATION OF ANDREW MCQUEEN

1. My name is Andrew McQueen. I am more than 21 years of age, of sound mind, and otherwise competent to make this Declaration. I am the Senior Vice President of APP of New Mexico ED, PLLC ("APP"). In that capacity, I have personal knowledge of the statements set forth in this Declaration, all of which are true and correct.

2. APP is a foreign company incorporated under the laws of Tennessee and has its principal place of business in Tennessee. APP's headquarters contains the company's payroll, human resources, recruitment, legal, and operations departments. APP's headquarters is located in Brentwood, Tennessee. APP's executive leadership directs, controls, and coordinates the company's activities at its headquarters in Brentwood, Tennessee. APP's revenue cycle department oversees billing and collection activities for all professional service fees related to

emergency services provided at Lovelace Health System, LLC ("Lovelace") hospitals in New Mexico from its headquarters in Tennessee.

3. APP provides professional emergency medical services at Lovelace hospitals in New Mexico. APP bills and collects all professional service fees for its provision of emergency medical services from the patients or responsible third-party payors. APP is responsible, at its own expense, for all such billing and collection of payments for its provision of emergency medical services.

4. In 2016, APP sent approximately 3,500 out-of-network patient accounts to collections, averaging \$940 per account, for emergency medical services rendered at Lovelace hospitals in New Mexico. In 2017, APP sent approximately 3,200 out-of-network patient accounts to collections, averaging \$1,005 per account, for emergency medical services rendered at Lovelace hospitals in New Mexico. In 2018, APP sent approximately 4,200 out of network patient accounts to collections, averaging \$1,047 per account, for emergency medical services rendered at Lovelace hospitals in New Mexico. Between 2016 and 2018 the amount of out-of-network patient accounts APP sent to collections for emergency medical services rendered at various Lovelace hospitals in New Mexico exceeded \$5,000,000.

I declare under penalty of perjury of the laws of the United State of America that the foregoing statements in the Declaration are true and correct.

EXECUTED on the 23rd day of March, 2020.



ANDREW MCQUEEN

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

Brian Lax, Tracy Buron-Hahnlein, Werner Hahnlein, Jeremy Hader,
on their own behalf and on behalf of all other similarly situated,

(b) County of Residence of First Listed Plaintiff Bernalillo

(EXCEPT IN U.S. PLAINTIFF CASES)

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

Nicholas H. Mattison and Richard N. Feferman

Feferman, Warren & Mattison, 300 Central Ave., SW, Suite 2000 West
Albuquerque, NM 87102 (505) 243-7773 (See Attachment)

DEFENDANTS

APP of New Mexico ED, PLLC f/k/a AlignMD of New Mexico, PLLC
and Lovelace Health System, LLC

County of Residence of First Listed Defendant Williamson County, TN

(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

Frank Alvarez

Quintairos, Prieto, Wood & Boyer, P.C.

1700 Pacific Ave., Suite 4545, Dallas, TX 75201 (214) 754-8755

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

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 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 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 checked="" 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)

Click here for: [Nature of Suit Code Descriptions.](#)

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 checked="" 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"/> 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"/> 835 Patent - Abbreviated New Drug Application <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"/> 376 Qui Tam (31 USC 3729(a)) <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 (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <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	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 type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	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 - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

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. 1441 and 1446; 28 U.S.C. 1332(d) and 1452

Brief description of cause:

Class Action, Breach of Contract, UPA Claims and Bad Faith, Conversion

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 Victor S. Lopez

DOCKET NUMBER D-202-CV-2020-01090

DATE

03/23/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Frank Alvarez

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

CIVIL COVER SHEET
(Attachment)

I. (c) Additional Attorneys for the Plaintiffs

David C. Kramer
P O Box 4662
Albuquerque, NM 87196
Telephone: (505) 545-8105
Facsimile: (505) 715-4884

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [APP of New Mexico, Lovelace Health System Sued Over Alleged Overbilling Practice](#)
