NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

AMENDED COMPLAINT $75
October 22, 2020 21:53

By: DANIEL J. MYERS 0087909

Confirmation Nbr. 2100909

AMANDA VAN BRAKLE

vs.

CLEVELAND CLINIC FOUNDATION

CV 20 936348

Judge: JOHN P. O'DONNELL

Pages Filed: 32

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

AMANDA VAN BRAKLE, on behalf of herself and all others similarly situated, c/o Daniel J. Myers, Esq., counsel 600 East Granger Road, 2nd Floor Cleveland, OH 44131 Plaintiff, v. CLEVELAND CLINIC FOUNDATION CT Corporation System, statutory agent 4400 Easton Commons Way Suite 125 Columbus, OH 43219 Defendant.	)	CASE NO.: CV-20-936348 JUDGE: JOHN P. O'DONNELL **FIRST AMENDED CLASS ACTION COMPLAINT FOR MONEY DAMAGES, DECLARATORY JUDGMENT, AND PERMANENT INJUNCTION UNDER THE OHIO CONSUMER SALES PRACTICES ACT** JURY DEMAND ENDORSED HEREON

Plaintiff Amanda van Brakle ("Plaintiff" or "van Brakle"), by and through counsel, hereby submits her First Amended Complaint, pursuant to Civ.R. 15 by way of consent of the parties, to this Court against Defendants Cleveland Clinic Foundation ("CCF" or "the Cleveland Clinic"), and avers and alleges as follows:

SUMMARY OF CLAIMS: "THE WHOLE SYSTEM IS MESSED UP."

1. This case challenges the Cleveland Clinic's unfair and deceptive patient billing practices of (a) failing to apply patients' payments to their designated services, (b) accepting payments for services without providing legally mandated receipts for initial and subsequent medical bill payments, as well as (c) failing to provide reasonable, good faith estimates of goods and services before they are provided. The two former matters are deceptive practices for which Plaintiff seeks relief on a class basis, and individual relief is sought on the latter.

2. These practices violate Ohio law by hiding the cost of medical services, and they cause financial confusion, stress, and monetary loss to patients.

3. Patients like Amanda van Brakle feel that "the whole system is messed up."[1] In what has become an all-too-common pattern, patients like van Brakle present to the Cleveland Clinic for treatment without being provided any advance information about what charges to expect for their care. They make partial payments demanded by the Cleveland Clinic despite that information void because the Cleveland Clinic gives them no choice. The Cleveland Clinic fails to properly account for those payments, and continues to bill the patient for the full, unreduced amount, while it conceals the costs and past payments, leaving patients without adequate information from which to challenge their being double-billed.

4. For these unlucky patients, challenging perceived overbilling on their account often results in the Cleveland Clinic sending inaccurate account information to debt collectors, subjecting the patients to unnecessary and unwarranted stress, harassment, and humiliation. Consumers are forced to deal with unscrupulous debt collectors, forced to file for bankruptcy, or they are forced to give up and double-pay the Cleveland Clinic's unlawful charges. Many, like Amanda van Brakle, are forced to make the same payment again and again until the Cleveland Clinic and its debt collectors leave them alone.

5. Many patients are financially ruined by these billing practices at issue. Even the legally allowed co-pay and deductible costs can be financially devastating.[2] That financial ruin,

---

[1] Anna Gorman, "Cancer Complications: Confusing Bills, Maddening Errors and Endless Phone Calls," NPR, Feb. 26, 2019, available at https://www.npr.org/sections/health-shots/2019/02/26/696321475/cancer-complications-confusing-bills-maddening-errors-and-endless-phone-calls, last accessed January 29, 2020.

[2] Arozullah, AM, Calhoun, EA, Wolf, M *et al.*, *The financial burden of cancer: estimates from a study of insured women with breast cancer*, J SUPPORT ONCOL. 2004; 2:271–278.

in turn, negatively impacts health and makes premature death more likely.[3] For example, over half of all cancer patients experience foreclosure, repossession, bankruptcy, loss of independence, and relationship breakdowns.[4] Cancer patients are almost 2.7 times more likely than their cancer-free peers to be forced into filing for bankruptcy protection.[5]

6. This is not a new problem; the Cleveland Clinic's billing practices have been a mess for years. In 2012, the Cleveland Plain Dealer[6] discussed in depth the numerous billing inconsistencies from the Cleveland Clinic, including overbillings, false and unnecessary collections referrals, and billing for services that did not occur or were not owed. According to one consumer, "[y]ou never know at what point you're not ever going to see residue of that visit again . . . . I don't even know what payment in full is." According to that same consumer, these billing practices used by the Cleveland Clinic make it "almost physically impossible, unless you're in the industry, to understand what you're supposed to be doing."

7. Up to 90% of hospital bills contain incorrect items or incorrect costs, and, on average, when hospital bills exceed $10,000, there are $1,300 in errors on those bills.[7] Based on Amanda van Brakle's experience, the Cleveland Clinic's bills are no exception.

---

[3] Ramsey, SD, Bansal, A, Fedorenko, CR *et al.*, *Financial insolvency as a risk factor for early mortality among patients with cancer*, J CLIN ONCOL. 2016; 34: p. 980–986.

[4] Adrienne M. Gilligan, *et al.*, *Death or Debt? National Estimates of Financial Toxicity in Persons with Newly-Diagnosed Cancer*, AM. J. OF MED., Oct. 2018, 131:10, p. 1187–1199.

[5] Ramsey, S, Blough, D, Kirchhoff, A *et al.*, *Washington state cancer patients found to be at greater risk for bankruptcy than people without a cancer diagnosis*, HEALTH AFF. 2013; 6: 1143–1152.

[6] Cleveland Plain Dealer, "Cleveland Clinic patients, others frustrated by medical bills: A World of Hurt," available at https://www.cleveland.com/healthfit/2012/10/cleveland_clinic_patients_othe.html, last updated Jan. 19, 2019, accessed August 5, 2020.

[7] *See, e.g.*, ABC News, "GMA: Hidden Costs in Hospital Bills," available at https://abcnews.go.com/GMA/story?id=127077&page=1, last accessed January 29, 2020.

8. The Cleveland Clinic hides healthcare costs from patients and loses patient payments by refusing to give legally complete and adequate receipts or estimates to patients.

9. The Cleveland Clinic knows that it does not provide receipts with the language required by the Ohio Administrative Code. It knows that it does not apply patient co-pays, co-insurance, or deductibles to the proper services. It knows that it often received overpayments as result of its failure to use proper receipts. But it chooses to continue being unfair and deceptive toward consumers.

10. Ohio law requires the Cleveland Clinic to provide dated, written receipts at the time patients pay the initial payments, most notably co-pays, deductibles, or co-insurance. OAC 109:4-3-07(B). These written receipts must include specific language to inform patients to what specific service the payment applies, what the total cash price of the service is, and whether the payment is refundable or non-refundable. OAC 109:4-3-07(B). Implicit in this receipt requirement is also the requirement that the amount paid applies immediately, i.e., at the time of payment, to the services and goods referenced in the receipt. The Cleveland Clinic's receipts provide none of that information.

11. The Cleveland Clinic could comply with the receipt requirements—but it chooses not to follow Ohio law. Nothing prevents the Cleveland Clinic from including the language mandated by the CSPA on its receipts, from applying payments to accounts on the date that the payment is received / recorded, or from identifying the item or service to which the payment was applied as well as the balance remaining.

12. Moreover, when patients make subsequent payments, the Cleveland Clinic must provide a receipt that states the date of the subsequent payment, what the amounts of the prior payments were, and the balance due after the subsequent payment. OAC 109:4-3-07(C).

The Cleveland Clinic does not do this, making it virtually impossible for patients to know how much they have paid or what is left due and owing.

13. The failure to provide receipts is rendered particularly problematic by the Cleveland Clinic's dual billing information systems.

14. Upon information and belief, the Cleveland Clinic used one billing information system, application, or database for determining if a co-pay is due, and a separate billing information system, application, or database for determining the actual cash price of a service as well as the negotiated reimbursement rate with an insured-patient's insurer.

15. Upon further information and belief, in order for a patient's co-pay or partial payment to be properly recorded on their account, the payment must be recorded in both systems; the Cleveland Clinic must indicate in one system that the co-pay is being paid, and then in the second system, the Cleveland Clinic must apply that payment to a specific service on the patient's account.

16. This dual billing information system setup, coupled with the refusal to provide legally mandated receipts, causes confusion about the cost of services and causes the Cleveland Clinic to misrepresent amounts owed, overbill, collect double payments, and send patients to collections for debts that are overstated, and/or non-existent. These issues would necessarily be remedied if the Cleveland Clinic provided the necessary receipts.

17. Ohio's consumer law also requires the Cleveland Clinic to provide a written notice to patients at their initial face-to-face contact and prior to services being performed, stating that the patient has the right to an estimate if the expected costs of services will be more than twenty-five dollars, requesting the patient's initial on their choice of a written, oral, or no estimate. OAC 109:4-3-05(A)(1). The Cleveland Clinic must also post a sign in a

conspicuous area where patients requesting services are directed, or give a separate form, explaining the right to receive an estimate. OAC 109:4-3-05(A)(2). When the patient choses their preferred estimate type, the Cleveland Clinic is then required provide the estimate before commencing services. OAC 109:4-3-05(A)(4).

18. Alternatively, after the passage of R.C. 5162.80, Ohio law requires that medical providers, like the Cleveland Clinic, provide patients in writing, before products, services, or procedures are provided/rendered, good faith estimates revealing:

(a) The amount the provider will charge the patient or the consumer's health plan issuer for the product, service, or procedure;

(b) The amount the health plan issuer intends to pay for the product, service, or procedure;

(c) The difference, if any, that the consumer or other party responsible for the consumer's care would be required to pay to the provider for the product, service, or procedure.

19. The Cleveland Clinic's failure to comply with the requirements of these statutory and regulatory directives, which are matters of hospital systemwide policy, conceals the cost of medical services from patients. Without the legally-required estimates and receipts, patients are deprived of the opportunity to plan for the financial impact of the services and/or to seek certain services elsewhere, at more reasonable rates.

20. The COVID-19 public health crisis clearly demonstrates that the public relies on hospitals like the Cleveland Clinic. Most of the public trusts hospitals implicitly. But that trust must be guarded, earned, and maintained. Hospitals are required to treat patients fairly. Hospitals are required to bill honestly. Hospitals are not allowed to enrich themselves illegally. But hospitals, like the Cleveland Clinic, have abused that trust. Hospitals are important, but they are not above the law.

21. Hospitals like the Cleveland Clinic are the only entities that force consumers to incur tens or hundreds of thousands of dollars of debt, before the consumer ever knows about that cost.

22. The healthcare industry has been rightfully criticized by elected officials from both political parties for not being transparent with pricing, by financially ruining sick and injured patients' lives, and for unfair and deceptive, or unconscionable, billing practices. This problem was even raised during the most recent State of the Union address. The injunctive relief sought in this case, as well as the declaratory relief sought, would address and solve those problems for future patients of the Cleveland Clinic.

23. The impact of this is too significant to leave to individual, competing actions that could result in contradictory results and flood the courts. And those most aggrieved by these errors often do not have the financial or physical ability to retain counsel and bring these suits.

PARTIES, JURISDICTION, AND VENUE

24. Amanda van Brakle is an individual who lives and resides in Medina County, Ohio.

25. Defendant Cleveland Clinic is a not-for-profit corporation with its headquarters in Cuyahoga County, Ohio, and its principle place of business located there, as well. In 2018, the Cleveland Clinic had an operating revenue of over $9.8 billion, income of over $244 million, and boasts on its website of providing services to people from all 50 states, and 129 countries, who travel to Cleveland, Ohio for services.

26. Amanda van Brakle transacted with the Cleveland Clinic, not a physician, for imaging services and related services, and purchased them from the Cleveland Clinic in Cuyahoga

County, Ohio. The services performed for van Brakle, and the illegal conduct of the Cleveland Clinic in this underlying action, occurred in Cuyahoga County.

27. The Cleveland Clinic is in the business of selling healthcare services to consumers primarily for personal or family use.

28. As a matter of policy, the Cleveland Clinic accepts and requires that partial payments be made to it for services from nearly all of its patients. These partial payments are also called co-pays, co-insurance, deductibles, and deposits towards certain services.

29. The Cleveland Clinic's patients are all consumers because they purchase and use healthcare and other services sold by the Cleveland Clinic, and use them primarily for personal and family use.

30. The Cleveland Clinic enters into consumer transactions with its patients and the responsible parties on their accounts to provide services and goods, as well as facility and equipment access.

31. The Cleveland Clinic is not a physician—it is a hospital system and it provides services and goods to consumers to whom it directly issued bills, and from whom it directly accepts payments.

32. The transaction between van Brakle and the CCF was not a transaction between a patient and physician. The Cleveland Clinic itself is a not-for-profit corporation that does not have a medical degree, and is not licensed as a physician to practice medicine or surgery in the State of Ohio.

33. On it's website, https://my.clevelandclinic.org/departments/imaging/services, the Cleveland Clinic advertises that it provides numerous "services" to patients, including, but not limited to, imaging services.

34. The relevant look back period of time for the Consumer Sales Practices Act violations against the Cleveland Clinic is two years prior to the date of the filing of the Complaint in this matter, or two years prior to the filing of these claims by van Brakle in the U.S. Federal District Court for the Northern District of Ohio, whichever is earlier in time.

35. The amount in controversy in relation to the claims against the Cleveland Clinic is believed to be less than $5,000,000.00, but more than $25,000.

OTHER MATERIAL FACTS

36. Amanda van Brakle visited the Cleveland Clinic in Lakewood, Ohio on August 24, 2018 for radiology / imaging services.

37. On the day of the services, August 24, 2018, Amanda van Brakle made payment of $25 for co-pay or co-insurance, or other type of deposit, toward the imaging services. This was a partial payment toward the service and was the first payment van Brakle made towards these services.

38. These imaging services were not performed by a physician. Separate professional services were rendered by a Cleveland Clinic physician on the same date for interpretation or analysis of the imaging results, and billed to van Brakle separately.

39. Amanda van Brakle received no written, dated receipt containing the information or disclosures required by OAC 109:4-3-07(B) at that time, or at any other time. She was not told the cost of the services, whether her payment was refundable or not, what the cash selling price of the services was, and she was not informed what balance would remain for the services.

40. The Cleveland Clinic never applied the $25 payment to any of the existing, due, or future bills for these or other services it charged to Amanda van Brakle.

41. Amanda van Brakle had face-to-face communication with Cleveland Clinic employees before the relevant services were provided on August 24, 2018.

42. No one at the Cleveland Clinic orally informed Amanda van Brakle, before services began, or anytime thereafter, that she had the right to receive a written or oral estimate for the services as required by OAC 109:4-3-05(B) or (C).

43. No one at the Cleveland Clinic provided a written notice to Amanda van Brakle, before services began, or anytime thereafter, that she had the right to receive a written, oral, or no estimate for the services, in the form required by, and outlined in, OAC 109:4-3-05(A)(1).

44. In fact, the Cleveland Clinic had, and has, no such "right to an estimate" form, and never uses one with patients.

45. In the alternative to the estimate required by OAC 109:4-3-05, the Cleveland Clinic fails to provide good faith estimates in the form required by R.C. 5162.80.

46. The Cleveland Clinic actively, and knowingly, misrepresents to patients, consumers, and the public that it cannot provide estimates. It can, as it knows how much it charges for particular services in advance of those services. For example, the Cleveland Clinic knew what it charges for the imaging services received by van Brakle, but it did not share that information with van Brakle.

47. No one at the Cleveland Clinic provided a written estimate to Amanda van Brakle for those services in the form required by, and outlined in, OAC 109:4-3-05(G), including a statement that the estimate would be binding for five days.

48. In fact, the Cleveland Clinic had, and has, no such form, and never uses one with patients.

49. Amanda van Brakle had private insurance, Medical Mutual, through her husband's employer.

50. Medical Mutual denied coverage for the imaging and professional services due to no fault or misconduct by Amanda van Brakle.

51. When Cleveland Clinic issued its September 7, 2018 billing statement to Amanda van Brakle, its first billing statement after the August 24, 2018 services and payment, the billing statement showed the imaging services charges, but no insurance adjustment for those services, no patient or insurance payment made in the past month for those services, and specifically did not show the $25 initial payment made by Amanda van Brakle.

52. Instead of complying with the receipt rule, the Cleveland Clinic actively and knowingly refuses to comply when it comes to co-pays and payments made the day of service.

53. According to the billing statements issued by the Cleveland Clinic, the Cleveland Clinic refuses to show payments made on its billing statements until after insurance processes the claim.

54. The September 7, 2018 bill did not include the professional services related to the imaging services, but instead only showed the imaging services themselves.

55. The relevant "open balances" on the September 7, 2018 billing statement appeared this way:

OPEN BALANCES

Details of your balances are totaled below. Payments made may not show below until insurance is finished processing your claim.

Date Of Service	Charge Description	Total Charges	Insurance Payments	Insurance & Other Adjustments	Previous Patient Payments	What You Paid Last Month	Remaining Patient Balance
	[Information Redacted]						
8/24/2018	Reference # 11042442019 Cleveland Clinic Main Campus IMAGING SERVICES	752.00	0.00	0.00	0.00	0.00	752.00

56. The September 7, 2018 statement stated that the minimum balance then due was $777 for this and one other previous service, which was false. This number was inflated, in part, because the September billing statement did not reflect the $25 initial payment made on, and for, the August 24, 2018 imaging services.

57. After receiving this September 7, 2018 billing statement, Amanda van Brakle made two more partial payments, each for $10, on September 28, 2018 and October 5, 2018, respectively.

58. The Cleveland Clinic issued a new billing statement on October 7, 2018, which was supposed to be current as of that date. It was not current.

59. When the Cleveland Clinic issued its October 7, 2018 billing statement, it added charges for professional services related to the August 24, 2018 imaging services, but again did not reflect the $25 payment made by Amanda van Brakle on August 24, 2018.

60. The October billing statement stated the minimum amount due was now $995, an amount that was false and overstated in that it did not account for the $25 payment and it did not account for the October 5, 2018 payment of $10. Moreover, the September 28, 2018 $10 payment was applied to a service preceding the August 24, 2018 service. No receipts were provided for these subsequent payments as outlined in the OAC sections cited previously.

61. The open balances on the October 7, 2018 billing statement appeared this way:

OPEN BALANCES							
Details of your balances are totaled below. Payments made may not show below until insurance is finished processing your claim.							
Date Of Service	Charge Description	Total Charges	Insurance Payments	Insurance & Other Adjustments	Previous Patient Payments	What You Paid Last Month	Remaining Patient Balance

[Information Redacted]

8/24/2018	Reference # 11042441984 Cleveland Clinic Professional Habibeh Gitiforooz, MD [redacted]	228.00	0.00	0.00	0.00	0.00	228.00
8/24/2018	Reference # 11042442019 Main/Family Health Centers IMAGING SERVICES	752.00	0.00	0.00	0.00	0.00	752.00

62. After the October 7, 2018 billing statement, Amanda van Brakle made three more additional partial payments / deposits toward the bill and services. Specifically, she paid $10 on October 16, 2018, $10 on October 19, 2018, and $20 on November 1, 2018.

63. On November 7, 2018, Cleveland Clinic issued another billing statement, this time stating that the minimum balance due was $945. That statement still did not reflect or account for any of the $25 payment that was initially made on August 24, 2018, nor did it identify the dates of subsequent payments.

64. For reasons unknown to Plaintiff, the Cleveland Clinic applied most of the subsequent payments to newer professional services instead of the originally billed imaging services.

65. Through November 7, 2018, the Cleveland Clinic only applied $10 of van Brakle's $85 in payments made toward the imaging services.

66. Amanda van Brakle then made additional payments as follows:

DATE	**AMOUNT**
11/15/18	$20
12/4/18	$10
12/28/18	$50
1/11/19	$123

67. The Cleveland Clinic still never accounted for the original $25 payment made by Amanda van Brakle on August 24, 2018. That $25 payment was never applied to any of the existing, due, or future bills for these or other services it charged to Amanda van Brakle.

68. Instead, the Cleveland Clinic sent an overstated, inflated amount to a debt collector, and directed that debt collector to collect it from Amanda van Brakle.

69. The Cleveland Clinic was informed of this overbilling through its agent/debt collector authorized to collect unpaid medical bills, but the Cleveland Clinic still did not correct this overbilling.

70. Cleveland Clinic failed to provide Amanda van Brakle with a receipt for her subsequent payments and deposits that stated all of the following: the date the payment was made, and the balance of the amount remaining due on the transaction to which the partial payment applied. This constituted multiple violations of OAC 109:4-3-07(C).

71. The receipts, when provided by the Cleveland Clinic, state only the name and address of the Cleveland Clinic, date of the payment, the payor's name, and the amount paid.

72. The Cleveland Clinic failed to apply van Brakle's payments to the relevant services at the time the payments were made.

73. This failure to provide proper receipts on the dates of payments caused the Cleveland Clinic to fail to timely account for those payments, resulting in the Cleveland Clinic invoicing and billing Amanda van Brakle for amounts that she had already paid before the billing statement was issued, e.g., the missing payments on the October 2018 and September 2018 billing statements that were paid prior to the statement issue date but were not noted on the statements. This caused confusion for Amanda van Brakle as to what was due and when it was due, and further led to her making more payments for the same amount again.

74. Cleveland Clinic's unfair and deceptive acts and practices, specifically its violations of OAC 109:4-3-07(B) and (C), directly and proximately caused confusion and overpayment by van Brakle, who disputed that the services had been billed properly to her insurer. It directly and proximately caused the Cleveland Clinic to list and transfer the imaging services bill, for collections with a debt collector. This occurred after the bill was deemed to be in default by the Cleveland Clinic, in or around November or December 2018.

CLASS TREATMENT AND FACTS

75. The Class, for purposes of the Consumer Sales Practices Act claim against the Cleveland Clinic Foundation related to initial payments ("Initial Payment Class"), is limited to the people that meet this definition now, in the future, and in the two years prior to the filing of this Complaint, or alternatively two years prior to the filing of the Amended Complaint in the United Stated District Court for the Northern District of Ohio Case No. 1:20-cv-00155-DAP:

a. All Patients that made at least one co-payment or co-insurance payment to the Cleveland Clinic toward one or more product, service, or procedure rendered at a Cleveland Clinic facility in the State of Ohio, or by Cleveland Clinic's in-home services within the State of Ohio, and where the co-pay or co-insurance payment was not applied to the product, service, and/or procedure for which it was charged.

i. "Patient" or "Patients" is defined as a natural person, i.e. individual, whether that person is now alive or dead, who paid or will pay the CCF for the provision of medical or healthcare related services for himself, herself, or a family member. Patient also includes that natural person's spouse, guardian, or family member, who is a responsible party for payment.

76. The Class, for purposes of the Consumer Sales Practices Act claim against the Cleveland Clinic Foundation, related to payments subsequent to initial payments ("Subsequent Payment Class"), again limited in time as outlined in paragraph 75, should be defined as:

a. All members of the Initial Payment Class who made more than one partial payment (including co-pay, co-insurance, or deductible payments) toward the same product, service, or procedure rendered at a Cleveland Clinic facility in the State of Ohio, or by Cleveland Clinic's in-home services within the State of Ohio, and where the co-pay, deductible, or co-insurance payment was not applied to the same product, service, and/or procedure for which it was charged.

77. Plaintiff Amanda van Brakle is a member of both Classes.

78. The Classes should be certified and each Classes' members compensated by being awarded their actual economic damages, i.e. the amount that they paid the Cleveland Clinic Foundation for which the Cleveland Clinic provided no corresponding immediate account or service credit, the amount of overpayments, if any, and/or interest on the delayed application of the funds to account, as later determined in discovery and by this Court. Actual economic damages may include restitution.

79. Unlike the receipt and payment related claims, above, Plaintiff does not seek certification of a class related to the estimate allegations. Instead, those violations, while they have occurred with every patient and every member of the classes above, are brought on an individual basis, and relief, including, but not limited to, a permanent injunction on the estimate-related issues, is sought on an individual basis.

80. The Classes should be awarded injunctive and declaratory relief on its claim, as outlined in the prayer for relief, and as otherwise later requested by the Classes, in accordance with the CSPA.

NUMEROSITY

81. There are many thousands, if not millions, of members of the Classes, as defined.

82. Each Classes' members have been damaged in a real amount, but many are unaware of that damage due to the concealment of pricing and confusing payment history and confusing billing statements of the Cleveland Clinic. Additionally, each Classes' members are entitled to obtain, individually or collectively, what would essentially operate as class-wide injunctive relief and declaratory judgment against the Cleveland Clinic Foundation. As such, there is a high probability of inconsistent outcomes, competing and contradictory injunctions, contradictory declaratory judgments, and a lack of information on the part of the consumers that would make individual actions impractical or impossible.

83. The State of Ohio courts, and specifically the Cuyahoga County Court of Common Pleas, could not handle a sudden influx of what could amount to many tens of thousands, if not hundreds of thousands, of additional individual actions.

84. There are well more than forty individuals who have not received proper receipts for their partial payments from the Cleveland Clinic. The Cleveland Clinic never offers or provides a legally proper receipt, and therefore engages in per se unfair and deceptive conduct with all of its patients who make partial payments. Patient payments amount to many tens or hundreds of millions of dollars annually for the Cleveland Clinic.

85. Joinder is nearly impossible with this potential number of Classes' members, and it is certainly impractical.

COMMONALITY AND TYPICALITY

86. Each Classes' members have been damaged, and are entitled to relief, by the exact same conduct of the Cleveland Clinic (failure to provide a legally valid receipt for initial or subsequent payments, or failure to apply co-pay or co-insurance payments to the correct service).

87. The measure of damages for each of the Classes, and their respective members, are the same—the amount paid by the Class member to the Cleveland Clinic Foundation as a partial payment, and/or interest thereon.

88. There are common questions of fact and law that predominate over individual claims across both Classes, including (1) whether the Cleveland Clinic provides receipts that comply with OAC 109:4-3-07(B); (2) whether the Cleveland Clinic provides receipts that comply with OAC 109:4-3-07(C); (3) whether the conduct engaged in is unfair and deceptive under R.C. 1345.02 and OAC 109:4-3-07 of the CSPA and its implementing regulations; (4) whether either of the Classes is entitled to injunctive relief under the CSPA; (5) whether either of the Classes are entitled to declaratory judgment under the CSPA; (6) whether the partial payments for which no receipts were provided are actual economic damages pursuant to the CSPA; (7) whether the Cleveland Clinic's failures and violations of the CSPA were bona fide errors and were unintentional and occurred despite the maintenance and existence of procedures created to avoid those errors and comply with the law; (8) whether the CSPA applies to the transactions between the Classes and the CCF; (9) and what the proper measure of damages are for these class-wide liability issues.

89. The Cleveland Clinic uses identical, insufficient and improper receipts that do not comply with OAC 109:4-3-07, for all of its patients and for all partial payments received.

90. Likewise, the Cleveland Clinic fails to provide good faith estimates to consumers.

91. The CSPA applies to the Cleveland Clinic's transactions with its patients in the same way, no matter the ultimate horrors that the Cleveland Clinic's error-prone and illegal billing and payment causes to its patients.

92. All members of both Classes are entitled to the same type and measure of damages and remedies under the CSPA.

93. Cleveland Clinic's illegal conduct is uniform across Ohio.

94. It is this exact conduct that has given rise to the claims of Plaintiff in this case, and also give rise to claims for all members of both proposed Classes.

95. For the same reason, Cleveland Clinic's defenses will be common across the Class, including whether the physician-exemption from the CSPA applies, whether the other laws pre-empt the CSPA, and whether there is a bona fide error defense that the Cleveland Clinic is likely to assert.

96. Plaintiff has the same claims concerning receipts as the rest of the members of the proposed Classes do, as she made an initial partial payment, and subsequent payments, in Ohio, before and after services were provided to her by the Cleveland Clinic at an Ohio location, and never received the legally required receipt under the CSPA.

97. Common proof of the contents of the receipts, and Cleveland Clinic's failure to provide the required information to patients, are applicable to the Plaintiff and the members of both proposed Classes.

ADEQUACY

98. Plaintiff is a consumer who understands her duties to the Classes, understands the importance of listening to counsel for legal advice, and who is committed to pursuing the best interests of the proposed Classes and their members.

99. Plaintiff is an intelligent consumer and has time to litigate this matter, understands the claims, understands the interests of the proposed Classes, and her interests are aligned with those of the Class and identical to those of the Classes.

100. The Plaintiff is part of the class, having made multiple partial payments to the Cleveland Clinic for imaging services and related professional services, after a visit to and services from the Cleveland Clinic in Ohio, and she did not receive proper receipts from the Cleveland Clinic. Therefore, Plaintiff possess the same interest, suffered the same injuries, and is entitled to recover the same amount from the Cleveland Clinic.

101. The few non-class allegations and non-monetary relief requests contained in this Complaint are also true for all class members, but some claims that result in no economic harm to the class members. Furthermore, they do not predominate over the claims of the class nor do they change the focus of this case, which is primarily concerning the illegal billing practices and unfair / deceptive conduct of the Cleveland Clinic in relation to patient billing and payments. Plaintiff does not seek any monetary damages that are calculated differently than any of the other class members' damages.

102. Plaintiff has chosen counsel who is experienced in consumer protection matters, class actions, and complex litigation. Daniel J. Myers was approved as class co-counsel in the nation-wide class action *Brandewie v. Wal-Mart Stores, Inc.* by Judge Gwin of the Northern District of Ohio. Dan has pursued multiple class actions, and has obtained class-

wide and state-wide injunctive relief under the CSPA on multiple occasions. Dan Myers regularly publishes on consumer protection topics, has been used and identified as an expert witness on multiple legal malpractice lawsuits concerning underlying consumer law claims, publishes and teaches on consumer protections as they apply to medical billing and collection issues, teaches CLEs for other attorneys on these topics, including a CLE at the Ohio Association for Justice's annual convention in May 2020 related to consumer law issues with medical and health insurance collections, regularly lectures on consumer law matters, and are referred matters from firms, large and small, across the State of Ohio due to their success, knowledge, and experience in consumer matters such as this. When and if necessary, Dan would and has co-counseled with other consumer protection and class action-experienced counsel on matters. Counsel and the Class representatives will adequately and diligently pursue the interests of the Classes.

103. Likewise, Scott D. Perlmuter regularly handles complex litigation, class litigation, and collective action litigation under the Fair Labor Standards Act, as well as other consumer protection and other areas of law. Scott has been approved as class counsel in several other matters and is also experienced in litigation in relation to the Cleveland Clinic Foundation, specifically.

PREDOMINANCE

104. Issues subject to generalized proof and applicable to the Classes each as a whole predominate over issues that are subject to only individualized proof.

105. The common questions of law and fact described previously are the most significant questions for this class action, the resolution of which will resolve the claims of the class, other than adding up the damages calculated for each member of both Classes.

106. Damages for members of both Classes will be easily calculated through addition of data from the data stored and discovered from the Cleveland Clinic, i.e. adding up the amount of all partial payments for all members of the class from a particular date range where services were transacted for in Ohio.

107. All violations of the CSPA, including those that do not give rise to actual economic damages, exist for all members of the Classes.

108. There are no individualized inquiries required for the claims or defenses to be resolved. All information and facts needed will be provided by the Cleveland Clinic and are available in its payment and other electronically stored data, as well as in the form of its template receipts that it uses.

SUPERIORITY

109. A class action is the superior method of resolving this dispute as outlined previously, and for the reasons outlined below.

110. Plaintiff alleges a single course of wrongful conduct by Cleveland Clinic, which gives rise to a single claim under the CSPA for the class, and therefore this case is particularly well-suited for class resolution.

111. For many of the members of both Classes, their damages may be in the low tens of dollars, and an individual action seeking compensation of tens or even $200 would be financially unreasonable for individual consumers to pursue.

112. There are no individual inquiries or defenses required to be analyzed to determine the claims of the Classes under the Consumer Sales Practices Act.

113. Cleveland Clinic's data and payment system provides an efficient way to obtain information on transactions at one time, from one place, meaning class treatment could

significantly reduce discovery costs to all parties from what they would be in multiple individual actions.

114. Given the concealed nature of the conduct and illegality of Cleveland Clinic's price hiding, it is not likely nor feasible for individual consumers to bring claims in individual suits, or even be aware of their claims against the Cleveland Clinic. Therefore, aggrieved persons will be without any effective redress unless they employ the class-action device.

115. The impact of this matter is too significant to leave to multiple individual, competing actions that could result in contradictory results. The healthcare industry has been rightfully criticized by elected officials from both political parties for not being transparent with prices, by financially ruining sick and injured patients' lives, and for unfair and deceptive, or unconscionable, billing practices. The injunctive relief sought in this case, as well as the declaratory relief sought, would address and solve those problems for patients of the Cleveland Clinic.

116. No other class actions of this nature are pending against Cleveland Clinic in Ohio to Plaintiff's knowledge.

117. There are no parallel pending individual actions to Plaintiff's knowledge concerning these violations, either.

COUNT I – VIOLATION OF THE CONSUMER SALES PRACTICES ACT FOR FAILING TO PROVIDE RECEIPTS

118. Plaintiff incorporates the foregoing allegations as if fully re-stated and re-written herein.

119. Defendant is a supplier as that term is used and defined in R.C. 1345.01 because it is a corporation and legal entity, i.e. a person that is engaged in the business of selling health and medical services and goods to consumers and patients.

120. Plaintiff is a consumer as that term is used and defined in R.C. 1345.01 because she purchased services from Defendant primarily for her personal use.

121. The transaction or transactions between Plaintiff and Defendant were consumer transactions as defined in R.C. 1345.01 because they involved the sale and transfer of services from the Cleveland Clinic to Plaintiff primarily for Plaintiff's personal use.

122. The Cleveland Clinic does not have a medical or other doctoral degree, is not a licensed physician, and does not engage in the practice of medicine or surgery.

123. Cleveland Clinic has engaged in multiple acts that are unfair, deceptive, and/or unconscionable, in violation of the CSPA, as specifically outlined in the Ohio Administrative Code and/or cases published in the Public Inspection File maintained by the Ohio Attorney General. The Cleveland Clinic fails to issue or provide receipts for initial partial payments received from consumers, in violation of OAC 109:4-3-07(B).

124. The Cleveland Clinic fails to issue or provide receipts for subsequent partial payments received from consumers, in violation of OAC 109:4-3-07(C).

125. The Cleveland Clinic fails to apply funds paid by patients, including van Brakle, to the specific services they were paid in relation to, and fails to apply the funds to the proper portion of the patient accounts at the time the payment is made.

126. The Cleveland Clinic committed other acts and practices, outlined herein, that are unfair, deceptive, or unconscionable in violation of the Consumer Sales Practices Act.

127. The inadequate and incomplete receipts used deny critical, material information about the cost of medical services, patient payment responsibility, financial risk, refundability of payments, and other information to patients.

128. If the Cleveland Clinic provided legally proper and valid receipts, it would not be able to lose track of, or lose or not include payments made by consumers on the consumers' accounts, and would not send the same amounts to collection or double bill or collect more money than permitted to be collected.

129. Cleveland Clinic has a policy of providing a particular type of receipt that is illegal and inadequate under Ohio law.

130. Cleveland Clinic has a policy of not providing the information specifically required by Ohio law to patients.

131. Cleveland Clinic engages in this conduct knowingly, intentionally, recklessly, negligently, with ill will and actual malice, with malice, with egregious fraud, and otherwise consciously.

132. Cleveland Clinic does not maintain, follow, possess, or use any policies or procedures in any effort to comply with OAC 109:4-3-07(B) or (C), or other aspects of the CSPA.

133. As a direct and proximate result of this conduct, Plaintiff and all members of all Classes have suffered economic and/or non-economic harm, including but not limited to the amount of the partial payments made, the loss of value or benefit of the co-pay or other initial and subsequent deposits and payments made to the Cleveland Clinic.

134. This conduct is ongoing—the Cleveland Clinic has not and will not use the proper, legally required receipt, and is transacting with many hundreds or thousands of consumers daily, violating their statutory protections and rights, causing them economic harm, and denying them the critical health and billing information they are legally entitled to when making healthcare purchases and incurring obligations.

135. The remedies available at law in damages are not sufficient to compensate for these injuries to patients.

136. For patients, the injury suffered is irreparable—they have already received services or goods and are otherwise obligated to pay moneys to the Cleveland Clinic, which they could have avoided if given the proper information or knowledge if they so desired, and they have already incurred the debt, or have already paid the costs, or otherwise committed themselves to payment and debt without knowing the cost.

137. The injunction sought against the Clinic would only require the Cleveland Clinic to comply with the mandatory requirements of Ohio's consumer protection laws. Therefore, the burden is not so great on the Cleveland Clinic. Multiple construction contractors, automobile mechanics, handymen, and personal service providers across the state comply with this same requirement.

138. For all in-network patients, the Cleveland Clinic knows what it is allowed to charge a patient for an approved service. Additionally, for all out-of-network patients, the Cleveland Clinic knows what it charges for the services it provides. In either case, the Cleveland Clinic has, at its own disposal, all of the information needed to provide an instantaneous receipt to patients at the moment they make a partial payment to the Cleveland Clinic.

139. The public interest would be served, not harmed, with an injunction. This public interest is medical price transparency, corrected billing, and accounting for payments made by patients. The general public, and public officials from both main political parties, see this as a public service and promotion of the public's interest.

140. Merely awarding economic damages does not rectify this issue nor prevent future violations nor fully protect the rights of consumers, the Cleveland Clinic's patients. Legal damages alone do not address the harm done. Only by issuing an injunction will correct this issue for the Class members and future members of the Classes.

141. This conduct was engaged in knowingly, deliberately, and intentionally.

COUNT II – VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT FOR FAILING TO PROVIDE ESTIMATES

142. Plaintiff incorporates the foregoing allegations as if fully re-stated and re-alleged herein.

143. The CCF fails to provide patients, at their first, initial face-to-face meeting with the CCF, and prior to the provision of services, with a written form that informs the patient of the patients' right to an estimate. No such form was provided to van Brakle. This is a violation of OAC 109:4-3-05(A)(1).

144. The CCF fails to post the notice at his locations required by OAC 109:4-3-05 concerning the right of customers to an estimate.

145. The CCF fails to provide patients with oral notice that the patient has a right to a written or oral estimate for services before the services begin. This is a violation of OAC 109:4-3-05. This oral notice was never provided to van Brakle.

146. Alternatively to the requirements of OAC 109:4-3-05, the CCF fails to provide the good faith estimates required by Ohio's price transparency law. No such estimate was provided to van Brakle.

147. The failure to provide these estimates, or notices of rights to these estimates, is unfair and deceptive, because it causes great confusion as to costs of services, amounts to be paid by patients, amounts that patients are liable for, and it makes it impossible for patients to provide informed consent and knowing authorization for services to the CCF, or to shop

around for better pricing. It makes it impossible to compare services from one hospital system to another in any meaningful way, and it often leads to surprise bills and overbilling.

148. As a direct and proximate result of this conduct, van Brakle was overcharged for the services, was denied the opportunity to find less expensive imaging services from another supplier, and suffered the severe emotional and financial stress, mental anguish, harassment, humiliation, and embarrassment.

149. This conduct, as well as all conduct related to the CSPA claims herein, was engaged in knowingly, intentionally, purposefully, and out of reckless disregard for the rights of van Brakle and serious risk of harm to her, by the Cleveland Clinic.

WHEREFORE, Plaintiff prays for relief as follows:

A. As to Count I, certification of the requested classes, or certification of the requested classes as modified by the Court, and judgment against the Cleveland Clinic for actual economic damages suffered by the class, any non-economic damages proven for the class, consequential damages, direct damages, costs, pre-judgment interest, post-judgment interest, and reasonable attorneys' fees, as well as all other relief available to the class under R.C. 1345.01;

i. Alternatively, in an individual case (if no class is certified by this Court, or a class is certified but only as to one class), judgment against the Cleveland Clinic Foundation for actual economic, consequential, direct, treble damages, non-economic damages, proven, and/or statutory damages, and all other relief permitted under R.C. 1345.09, as well as costs and reasonable attorneys' fees;

B. Also as to Count I, regardless of certification, injunctive relief pursuant to the CSPA prohibiting Cleveland Clinic Foundation from engaging in the unlawful, deceptive, unfair, or unconscionable conduct complained of in relation to Plaintiff and others, including, but not limited to:

i. Prohibiting the Cleveland Clinic Foundation from accepting partial payments from consumers unless the consumer, at the time of payment, is provided with a receipt that fully complies with the requirements of OAC 109:4-3-07;

ii. Requiring the Cleveland Clinic Foundation to apply payments made by patients to the specific service that the payment relates to, at the time the payment is made;

iii. Prohibiting the Cleveland Clinic Foundation from issuing account, billing, or other statements concerning money owed and payments made that do not accurately reflect payments that were made up to the date of the statement.

B. As to Count II, judgment in favor of van Brakle against the Cleveland Clinic for actual economic damages, non-economic damages, statutory damages, treble actual economic damages, compensatory damages, costs of the action, pre-judgment interest, post-judgment interest, reasonable attorneys' fees, and all other relief available under R.C. 1345.09, including, but not limited to, injunctive relief pursuant to the CSPA prohibiting Cleveland Clinic Foundation from engaging in the unlawful, deceptive, unfair, or unconscionable conduct complained of in relation to Plaintiff and others, including, but not limited to:

i. Requiring the Cleveland Clinic Foundation to provide all conscious patients with a form as outlined in OAC 109:4-3-05(A) in regard to the patients' right to receive an estimate;

ii. Requiring the Cleveland Clinic Foundation, upon request by a consumer for an estimate, to provide a good faith estimate for services to the requesting consumer in the manner the estimate was requested (written or oral). The estimate must comply with the requirements of the Ohio Administrative Code 109:4-3-05 as well as all other regulation promulgated in furtherance of R.C. 1345.01 *et seq.*

iii. In the alternative to the requested injunctive sought in part C above, one requiring the Cleveland Clinic Foundation, to provide a good faith estimate for services to the requesting consumer in the manner outlined in R.C. 5162.80.

C. Also as to Count I and II, regardless of whether any class is certified, declaratory judgment pursuant to the CSPA declaring the following conduct to be unfair, deceptive, and/or unconscionable under the CSPA:

i. A hospital or healthcare provider's failure to inform the patient, in writing, of the cash selling price of the services at the time it receives the patient's initial payment;

ii. A hospital or healthcare provider's failure to account for all payments made by a patient on the patient's account;

iii. A hospital or healthcare provider's sending of a patient account to a third-party debt collector when the medical provider has not yet applied all payments made by the patient to the patient's account;

iv. A hospital or healthcare provider's failure to comply with the estimate requirement in R.C. 5162.80;

v. A hospital or healthcare provider's failure to provide a receipt or receipts that comply with OAC 109:4-3-07 when a patient makes an initial, subsequent, or final, payment towards a service or for goods;

vi. A hospital or healthcare provider's failure to provide a customer at the first face-to-face meeting with a writing that informs the customer that the customer has the right to receive a written or oral estimate, in the form outlined in OAC 109:4-3-05(A) when that medical provider fails to provide a written estimate for the services that expressly states it is binding for five days;

vii. A hospital or healthcare provider's failure to orally inform a consumer that the consumer has the right to receive a written or oral evidence, when there is no face-to-face contact between the provider and consumer prior to the service performance;

D. The costs of this action, and pre-judgment and post-judgment interest, as well as attorneys' fees, and all other relief available under R.C. 1345.09, or as is otherwise proper, just, and equitable.

Respectfully Submitted,

/s/ Daniel J. Myers
Daniel J. Myers (0087909)
Myers Law, LLC
600 East Granger Rd, 2nd Floor
Cleveland, OH 44131
P: 216-236-8202 / F: 216-674-1696
E: DMyers@MyersLawLLC.com

/s/ Scott D. Perlmuter
Scott D. Perlmuter (0082856)
4106 Bridge Ave.
Cleveland, OH 44113
P: 216-308-1522
E: scott@tittlelawfirm.com

Co-Counsel for Plaintiff

JURY DEMAND

Plaintiff requests a jury of the maximum size permitted by law to decide the claims that are triable to a jury.

/s/ Daniel J. Myers
Daniel J. Myers (0087909)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served on counsel for Defendant via email and via notice from the Court's e-filing system on this October 22, 2020.

/s/ Daniel J. Myers
Daniel J. Myers (0087909)