

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU**

-----X  
ERIC KROBATH, on behalf of himself and  
all others similarly situated,

Index No. \_\_\_\_\_

Plaintiff designates Nassau  
County as the place of trial.

Plaintiff,

-against-

SOUTH NASSAU COMMUNITIES HOSPITAL,  
a New York Corporation; and DOES 1 through 25,  
inclusive,

**SUMMONS**

Defendant.  
-----X

To the above named Defendant:

South Nassau Communities Hospital  
Attn: President  
2445 Oceanside Road  
Oceanside, New York 11572

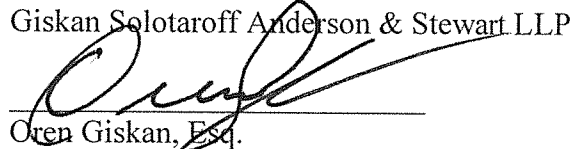
You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is the cause of action arose in Nassau County and South Nassau Communities Hospital is located in Nassau County at 2445 Oceanside Road, Oceanside, New York, 11572.

Dated: April 2, 2015  
New York, New York

Giskan Solotaroff Anderson & Stewart LLP

By:

  
Oren Giskan, Esq.

Attorneys for Plaintiff and the Class  
11 Broadway, Suite 2150  
New York, NY 10004

Barry L. Kramer, Cal. Bar No. 61772  
kramerlaw@aol.com  
LAW OFFICES OF BARRY L. KRAMER  
9550 S. Eastern Ave. Ste. 253  
Las Vegas, Nevada 89123  
Tel: (702) 778-6090

Oren Giskan  
GISKAN SOLOTAROFF ANDERSON & STEWART LLP  
11 Broadway, Suite 2150  
New York, New York 10004  
Tel: (212) 847-8315

*Attorneys for Plaintiff*

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU**

-----X  
ERIC KROBATH, on behalf of himself and all others  
similarly situated,

Plaintiff,

-against-

Case No.

SOUTH NASSAU COMMUNITIES HOSPITAL, a  
New York Corporation; and DOES 1 through 25,  
inclusive,

Defendants.

-----X

**CLASS ACTION COMPLAINT for: (1) Negligent Concealment; (2) Intentional  
Concealment; (3) Unfair and Deceptive Business Acts and Practices (N.Y. Gen. Bus. Law  
§349); and (4) Declaratory Judgment**

**I. INTRODUCTION**

1. Eric Krobath brings this Class Action Complaint against South Nassau  
Communities Hospital (“SNCH”), challenging SNCH’s unreasonable, unconscionable and  
unlawful pricing, billing and collection practices for emergency care with respect to Mr Krobath  
and other similarly situated self-pay patients. Mr. Krobath is informed and believes, and thereon  
alleges, that SNCH owns and/or operates a number of healthcare facilities in the State of New  
York.

2. This complaint applies to patients who were provided emergency screening, stabilization and treatment/services by SNCH (i.e., not scheduled or elective services), and who were self-pay patients not covered by commercial insurance or a governmental healthcare program at the time of their hospital visit.

3. The nature and extent of diagnostic procedures and emergency treatment/services provided to an individual emergency care patient can vary substantially from case to case. As a result, neither the patient nor the attending physician knows, in advance, what treatment/services will be ordered in an emergency care situation, thus making it impossible to look up, compare, or negotiate fixed pricing amounts or payment terms in advance of receiving emergency treatment/services.

4. Mr. Krobath is informed and believes, and thereon alleges, that SNCH has a pattern and practice of requiring emergency care patients (or their agents), including Medicare, Medicaid, insured, and self-pay patients, to sign its form, adhesive intake agreement, captioned “EMERGENCY DEPARTMENT/INPATIENT AUTHORIZATION FOR TREATMENT” which is drafted solely by SNCH (hereinafter “Contract”).

5. The Contract is designed to be applicable to all categories of patients, and includes such things as a consent to treatment, a description of the legal relationship between the Hospital and attending physicians, an assignment of insurance and health plan benefits to the Hospital, and a Financial Liability provision, among other things.

6. The Contract’s Financial Liability provision, which is applicable to all signing patients, reads as follows:

**FINANCIAL AGREEMENT:** I agree that, in consideration for the services rendered to me, I agree to pay all amounts for which I am financially responsible, in accordance with the rates and terms of the Hospital. I understand that to the extent permitted by law, where insurance or other third party benefits are insufficient to pay for all of my (the patient’s) Hospital and/or practitioner

services rendered, that I will be responsible for the payment of any balances due as determined by the respective provider of services, including deductibles, copayments, coinsurance or other fees required by insurer, HMO or other benefit plan. I understand that if I have not provided the Hospital with accurate and current information regarding my insurer, HMO or other benefit/third party payer (e.g., Medicare or Medicaid) which provides me with health care coverage, I will be personally responsible for the case [sic] of all care rendered by the Hospital and its practitioners....

7. This financial liability provision, which is applicable to Medicare patients, Medicaid patients, insured patients, and self-pay patients alike, is vague and ambiguous as to pricing and payment terms, in that it fails to describe, specify, explain, or identify any price or pricing schedule for the hospital's services and treatment rendered or to be rendered to an emergency care patient. Furthermore, in light of the fact that SNCH's form Contract covers multiple categories of emergency care patients with differing legally mandated pricing schedules, it is logically impossible for its generic Financial Liability Provision to provide anything more than a cursory statement as to the patient's liability for the treatment rendered, while leaving the pricing term open.

8. Despite the lack of any agreed pricing terms or rate schedules in its Contracts, Mr. Krobath is informed and believes that Hospital prices and bills its self-pay patients in accordance with a rate schedule that is internally developed and maintained by SNCH, and which the Hospital internally refers to as its Charge Description Master or Chargemaster<sup>1</sup>. Mr. Krobath is informed and believes that the Chargemaster rates charged by Hospital to its self-pay patients are more than three times the rates charged to its other patients receiving the same treatments and

---

<sup>1</sup> Within the hospital industry, hospitals maintain spreadsheets, called "Charge Description Masters" or "Chargemasters," which contain code numbers, descriptions, and gross billing charges for each product and service offered to patients. Such itemized lists provide an easy and convenient method for tracking the treatment and services provided. However, these gross billing charges are neither regular payment rates, nor usual and customary payment rates, nor reasonable payment rates. Furthermore, SNCH's Chargemasters do not constitute a pricing schedule which any category of hospital patient regularly pays or is expected to pay. Indeed, IRS regulations applicable to non-profit hospitals (such as SNCH) specifically prohibit their billing of self-pay patients at Chargemaster rates.

services, more than three times the Hospital's cost of providing those treatments and services, and more than three times the reasonable value of those treatments and services.

9. The Contract terms are also inherently false and deceptive, in that it implies that all emergency care patients, given and signing the same agreement, will be agreeing to pay the same amounts "in accordance with the rates and terms of the Hospital," for which the Hospital has not been reimbursed. However, the payment liability for nearly all patients, including Medicare, Medicaid, and commercially insured patients, is not determined in accordance with the Hospital's Chargemaster, but by authorized Medicare rates in the case of Medicare patients, Medicaid rates in the case of Medicaid patients, and privately negotiated contracts in the case of commercially insured patients. The discrepancy between the Chargemaster rates charged to Hospital's self-pay patients and the actual payment rates for its other patients is extreme, but is totally undisclosed by the Hospital to its self-pay patients.

10. The Contract contains a single Financial Liability Provision which does not distinguish between Medicare, Medicaid, commercially insured, and self-pay patients, and misleadingly purports to create the same financial liability for all emergency care patients, including Medicare, Medicaid, commercially insured patients, and self-pay patients alike. As a result, Mr. Krobath reasonably expected to be charged at the same rates as applicable to other emergency care patients appearing at the same facilities, signing the same contract, subject to the same Financial Liability Provision, and receiving the same level of treatment. Mr. Krobath certainly did not agree or expect to pay an unreasonable and excessive amount for the treatment rendered, and nothing in the Contract constitutes an agreement by self-pay patients to pay for hospital services based on an artificially inflated and grossly excessive rate structure not described in the Contract. Furthermore, there is nothing in the Contract or its Financial Liability Provision that advises or informs self-pay patients of any disparity in pricing between self-pay

and other patients.

11. This entire vague and ambiguous provision must be interpreted against the Hospital, which drafted the agreement.

12. Further, since this same financial liability provision purports to apply to Medicare patients, Medicaid patients, and insured patients (with insurance plans which have contracted with the Hospital), all of which categories are legally responsible for payment at rates other than the charges listed in the Hospital's charge description master,<sup>2</sup> the financial liability provision cannot be interpreted as an agreement by self-pay patients, and only self-pay patients, to pay at the artificially inflated and grossly excessive Chargemaster rates that no other patients are required to pay. Under such circumstances, self-pay patients cannot be contractually obligated to pay more than the *reasonable value* for the emergency care provided by SNCH.

13. The reasonable value for medical treatment/services is based on the medical treatment/services provided, not on the financial condition of the patient receiving the treatment/services. Thus, if a self-pay emergency care patient receives an emergency appendectomy but it turns out the patient is flat broke, the reasonable value for such services is not suddenly reduced to zero, nor would the Hospital in such situation seek reimbursement from County or Federal agencies based on services with a zero valuation. Likewise, if the patient was a billionaire, the reasonable value of the services would not suddenly escalate into the millions. Furthermore, even where the Hospital is forced to write off the services for an indigent patient as

---

<sup>2</sup> For example, Medicare patients are only liable for "Medicare allowed" rates, and such rates are determined by governmentally approved rate schedules which utilize diagnostic and classification coding rather than individual items of treatment/services coding. The same is true for Medicaid patients, whose costs are based on approved Medicaid rate schedules, not charge description master rates. While such governmentally approved rates are typically far less than Chargemaster rates, they are not properly viewed as discounted Chargemaster rates, particularly since the entire billing methodology is different. Likewise, insured patients are only liable for special rates negotiated by their insurer with the hospital, which include such things as "per diem" limitations and specified "office visit" costs, and are also not properly viewed merely as discounted Chargemaster rates.

charity, the Hospital does not base its valuation for the services written off on the financial wherewithal of the patient. Numerous analogous situations demonstrate that the reasonable value of the goods and services provided are based on the goods and services, and not the financial wherewithal of the purchaser. Thus, while the ability of a patient to pay for medical treatment may vary substantially from patient to patient, the reasonable value of the treatment/services does not.

14. Taken together, the Hospital's wrongful conduct includes all of the following: (1) providing an adhesive contract which contains an unintelligible, misleading and/or unconscionable financial liability provision; (2) concealing and failing to inform self-pay emergency care patients that they will be billed and required to pay for emergency care at artificially inflated and grossly excessive rates; (3) concealing and failing to inform self-pay emergency care patients that they will be billed and required to pay at rates substantially higher than reimbursement rates paid by other patients signing the same Contract and receiving the same level of treatment and services; and (4) billing and seeking to enforce collection of SNCH's unreasonable, unfair, and grossly excessive "Chargemaster" rates from its self-pay patients. This conduct is particularly egregious because emergency self-pay patients are under substantial duress when seeking emergency treatment/services, and the Hospital's pricing and billing procedures are intentionally concealed in a shroud of mystery.

15. SNCH claims that the financial liability provision in its Contract requires self-pay patients to pay for screening, stabilization, and treatment/services at SNCH's Chargemaster rates, despite the fact (not mentioned in its Contract) that such rates *are several times higher than the overall reimbursement rates from other categories of patients signing the exact same agreement and several times SNCH's actual costs*. Pursuant to SNCH's unconscionable and unenforceable financial liability provision, SNCH claims it is entitled to bill and seek collection of its

Chargemaster rates from self-pay emergency care patients, despite the fact that the exorbitant and artificially inflated nature of such rates is not mentioned, disclosed, described, or otherwise identified in its Contracts, and not the payment rates that the vast majority of patients signing the same agreement are required to pay. Furthermore, SNCH's Chargemaster rates are several times the reimbursement rates for essentially all of SNCH's other emergency care patients, including but not limited to those covered by governmental healthcare programs such as Medicare and Medicaid. Additionally, Chargemaster rates are several times the Hospital's actual costs, and several times the *reasonable value* of the emergency care it provides, which makes the application of such rates to self-pay patients unconscionable.

16. Mr. Krobath brings this class action on behalf of himself and all similarly situated individuals who were billed at the Hospital's full Chargemaster rates for emergency screening, stabilization, and/or treatment/services at one of SNCH's emergency care facilities in New York State and who did not have their payments made by an insurer or government health care program (the "Class"). Excluded from the Class are those individuals who paid nothing on their accounts and whose balances have been written off in full without being subject to ongoing collection efforts.

## **II. JURISDICTION AND VENUE**

17. This Court has personal jurisdiction over SNCH. SNCH conducts business within the State of New York, has purposely availed itself of the benefits and protections of this State, and/or has sufficient contact with this State such that maintenance of this action and in this locale would be consistent with traditional notions of fair play and substantial justice. SNCH is based in New York and operates one or more hospital emergency facilities within the state. Venue is proper here, because SNCH is located and does business in Nassau County, New York, and because the acts and transactions giving rise to this complaint took place in Nassau County, New



York.

### **III. PARTIES**

18. Plaintiff Eric Krobath is a citizen and resident of Nassau County, New York.

19. Mr. Krobath is informed and believes, and thereon alleges, that SNCH is a New York Corporation with its principal places of business in New York. Mr. Krobath is informed and believes, and thereon alleges, that SNCH operates multiple medical care facilities throughout Nassau County, New York.

20. The true names and capacities of Defendant Does 1 through 25, inclusive, are unknown to Plaintiff and, therefore, they are sued by such fictitious names. Plaintiff will seek leave of court to amend this complaint to allege the true names and capacities of the Doe Defendants when they have been ascertained. Plaintiff is informed and believes, and thereon alleges, that each Doe Defendant is in some manner responsible and liable for the actions herein alleged.

### **IV. AGENCY ALLEGATIONS**

21. Mr. Krobath is informed and believes, and thereon alleges, that SNCH exercises control over its constituent medical facilities by developing and controlling their patient admission agreements, as well as their internal policies relating to pricing, billing, and collection practices.

22. Mr. Krobath is informed and believes, and thereon alleges that at SNCH's direction and with its approval, each of SNCH's Hospitals and other medical centers represents itself as being part of SNCH's medical system.

23. At all relevant times, each and every individual SNCH facility was and is the agent of SNCH. In committing the acts alleged herein, each and every SNCH facility acted in the course and scope of its agency and was acting with the consent, permission, authorization,

satisfaction and knowledge of SNCH, and perpetuated and/or aided and abetted the wrongdoings described herein. Mr. Krobath is informed and believes, and thereon alleges, that all actions of each SNCH facility were ratified and approved by SNCH or its officers, directors, controlling persons, agents, partners, or joint venturers.

## V. GENERAL ALLEGATIONS

24. Each emergency care patient arriving at an SNCH Hospital, regardless of whether he or she is a Medicare, Medicaid, worker's compensation, privately insured, HMO, or self-pay patient, is required to sign the same adhesive Contract governing admission and treatment, under circumstances which, by their emergency nature, involve a substantial degree of duress. This standard, adhesive Contract contains a vague, ambiguous, and unintelligible financial liability provision (described previously and captioned "Financial Agreement") which purports to apply to all patients. Although the Contract fails to distinguish between categories of patients, Medicare and Medicaid patients have an entirely different rate structure defined by mandatory government regulations and schedules, and are not subject to or bound by SNCH's "Charge Description Master." Likewise, for patients who are insured by commercial insurers (i.e., Blue Cross, Aetna, etc.), reimbursement rates are set forth in confidential contracts individually negotiated between SNCH and the various commercial insurers, and are not subject to or bound by SNCH's "Charge Description Master." Thus, for the vast majority of patients, the financial liability is based on rate schedules found other than in the Contract. Although it is not ascertainable from the Contract, the Hospital seeks to require only self-pay patients to pay at its Chargemaster rates, rates which are several times higher than the reimbursement rates applicable to other classes of patients signing the same Contract and receiving the same treatment/services. SNCH's "Charge Description Master" rates are several times higher than the *reasonable value* of the medical services they relate to, and several times the *Hospital's costs* in providing such

services.

25. SNCH does not publish its Chagemaster rates on its website or elsewhere. Thus emergency care patients cannot reasonably be expected to have knowledge of SNCH's Chagemaster rates or of their exorbitant nature when they sign the Contract.

26. Although SNCH's Contract makes each emergency care patient financially liable for the treatment/services rendered by SNCH, SNCH's Contract fails to reasonably explain, describe, or quantify the pricing for treatment/services for self-pay patients.<sup>3</sup>

27. Since SNCH's adhesive Contract contains no pricing terms for a given emergency care patient which are fixed, certain or capable of being made so, the payment requirement under the Contract's financial liability provision is inherently vague and ambiguous. Under such circumstances, applicable law implies a contractual obligation on behalf of self-pay patients to pay the *reasonable value* for the emergency care provided by SNCH, but precludes SNCH from requiring payment in excess of the *reasonable value* of the treatment/services provided.

28. Even if SNCH's Contract required payment of SNCH's Chagemaster rates, such provision would be oppressive, and, given the circumstances under which emergency care patients signed their Contracts, SNCH's financial liability provision would be both substantively and procedurally unconscionable and accordingly void and unenforceable. Specifically, Mr. Kroboth is informed and believes, and thereon alleges that the Hospital's Chagemaster rates are at least 3 times the average overall reimbursement rates from other patients of the hospital, and at

---

<sup>3</sup> As set forth above, SNCH's financial liability provision is inherently meaningless. In point of fact, SNCH has no regular rates and terms applicable to emergency room patients, and its Contract makes no attempt to describe, define, or differentiate payment terms applicable to different categories of patients. SNCH individually negotiates rate schedules with private insurers, and accepts reimbursement for Medicare and Medicaid patients based on governmentally approved regulations and rate schedules. Further, once emergency care is provided to a self-pay patient, SNCH often seeks to qualify low-income patients for government assistance and provide various unspecified discounts and financial assistance packages for low-income patients not qualified for government assistance.

least 3 times the Hospital's actual costs of providing its treatment/services. This is substantively unconscionable, and particularly egregious, since the Hospital's financial agreement provides for the same financial responsibility for all emergency care patients, and the Hospital's unequal application of its Contract, and its billing practices, are concealed from self-pay patients.

Furthermore, billing at such rates under the duress that accompanies emergency care, along with the concealment of the billing practices alleged herein, is procedurally unconscionable. In light of such unconscionability, applicable law implies a contractual obligation on behalf of self-pay patients to pay the *reasonable value* for the emergency care provided by SNCH, but precludes SNCH from requiring payment in excess of the *reasonable value* of the treatment/services provided.

29. Furthermore, even if a self-pay emergency care patient did not sign this form agreement but received emergency treatment/services from SNCH,<sup>4</sup> the patient would still be obligated, under principles of quasi-contract, unjust enrichment, or other applicable law, to pay SNCH for the *reasonable value*, but no more than the *reasonable value*, of the emergency care provided.

30. Despite its entitlement to receive no more than the *reasonable value* of the emergency treatment and services provided, SNCH engages in unfair and unreasonable pricing, billing and collection practices with regard to self-pay patients. Specifically, SNCH bills and takes action to force self-pay emergency care patients to pay for emergency care at its artificial and grossly excessive Chargemaster rates, even though (1) the rates are not reasonably available to these patients for viewing in advance of treatment, (2) all patients sign the same Contract, but the Chargemaster rates billed to self-pay patients are substantially more than the reimbursement

---

<sup>4</sup> This situation would typically occur if a patient is brought unconscious to the emergency room.

rates required as “payment in full” from other patients such as commercially and/or governmentally insured patients<sup>5</sup>, (3) SNCH conceals from self-pay patients the dramatic pricing disparities between self-pay patients and other categories of patients, (4) SNCH’s Chargemaster rates are unfair, unreasonable, and artificially inflated, and (5) SNCH’s Chargemaster rates are several times higher than SNCH’s costs of providing treatment and services.<sup>6</sup>

31. SNCH fails to inform or explain to its self-pay patients that even though it is legally required to screen, stabilize and treat self-pay emergency care patients regardless of their insurance status or ability to pay,<sup>7</sup> its policy is to bill them at its grossly excessive and artificially inflated Chargemaster rates, despite the fact that such rates are not disclosed at the time of treatment, such rates are vastly higher than the actual reimbursement rates received from other patients, such rate disparity between patients is deceptively and misleadingly concealed from self-pay patients, such rates are vastly higher than SNCH’s costs of providing treatment and services, such rates are vastly higher than the *reasonable value* of those treatments and services, such rates are unconscionable, and virtually no patients pay or are expected to pay at such rates.

32. SNCH’s pricing, billing and collection practices have a significant detrimental

---

<sup>5</sup> All emergency care patients, including Medicare, Medicaid, and insured patients are required to sign the same Contract. Due to the widespread coverage of government health care programs such as Medicare and Medicaid, as well as the existence of multiple insurer contracts, the vast majority of patients signing the Contract are not actually subject to SNCH’s Chargemaster rates. These basic and incontrovertible facts directly refute any argument by SNCH that each patient, by signing the Contract, becomes liable to pay SNCH for emergency care at “Chargemaster” rates.

<sup>6</sup> While SNCH often seeks reimbursement for services furnished to self-pay patients through governmental sources (including Medicaid), and as a last resort sometimes provides discounts through its own charity or financial assistance programs, the possibility of SNCH discounting or accepting some form of reduced reimbursement on a grossly excessive and artificially inflated bill would not justify SNCH’s sending out a bill which is artificially inflated, excessive, and unreasonable in the first place. Additionally, self-pay patients have no legal or contractual obligation to apply and/or seek to qualify for charity or financial assistance from governmental entities in order to pay and/or subsidize payment of an unfair, illegal, and unreasonable bill.

<sup>7</sup> The Emergency Medical Treatment and Labor Act (EMTALA) is a federal law that requires anyone coming to an emergency department to be stabilized and treated, regardless of their insurance status or ability to pay.

impact on the large population of self-pay emergency care patients, and thus have a broad impact on consumers at large.

33. Mr. Krobath is informed and believes, and thereon alleges, that SNCH's Chargemaster rates are several times its internal costs of providing treatment/services. Indeed, the latest available "Hospital Inpatient Cost Transparency" statistics filed with the New York State Department of Health show SNCH's charges as being on average approximately 3.4 times its costs of providing services,<sup>8</sup> indicating that SNCH's Chargemaster rates are **over three times** its actual costs of providing services. Such Chargemaster rates are artificially inflated in order to boost hospital reimbursement rates, as well as to reflect a higher level of charity contribution and financial assistance given to the local community. In essence, SNCH has an ulterior motive in inflating its Chargemaster rates, and those self-pay patients who have sufficient assets for the Hospital to pursue, are, in effect, innocent victims who are caught up in billing practices designed to maximize the Hospital's ultimate recovery from governmental sources and garner favorable publicity in terms of contribution amounts to the community.<sup>9</sup> Chargemaster rates, if actually applied to all emergency care patients, would create an obscene profit margin under any reasonable standards, based on the Hospital's actual reported costs and expenses, and such rates would be several times higher than the Hospital's actual reported reimbursement rates to the Hospital for any category of patients or across the board.

34. Patients covered by insurance, including governmental and private insurance, form the vast majority of SNCH's customer base. Medicare, Medicaid, and private insurers all

---

<sup>8</sup> Source: analysis of data from <https://health.data.ny.gov/Health/Hospital-Inpatient-Cost-Transparency-Beginning-200/7dtz-qxmr>, accessed 4/1/2015, giving total charges of \$663,802,600 and total costs of \$196,643,643 for 2011.

<sup>9</sup>The amount of Charity discounts given as community services are based on the Hospital's Chargemaster rates.

reimburse SNCH based on governmentally regulated or privately negotiated rate structures rather than on Chargemaster rates. Significantly, SNCH's Chargemasters are not tethered to its actual costs for providing treatment and services, and are subject to unilateral manipulation by the Hospital for its own financial benefit.

35. Since SNCH's Chargemaster rates are not amounts which SNCH expects to be paid by any category of patient, SNCH's Contract cannot reasonably be construed as an agreement by all signing patients to pay for treatment/services at SNCH's artificially inflated and grossly excessive Chargemaster rates, and selective enforcement of such rates against a relative handful of patients is oppressive, unfair and unreasonable.

36. SNCH further acts egregiously by "failing to inform" and/or "concealing" from its self-pay patients its uniform policy to bill and require payment from self-pay patients at rates several times higher than rates paid by other patients signing the same Contract and agreeing to the same liability provision. This "failure to inform" and/or "concealment" is shown by the fact that (1) emergency care patients have no opportunity to review SNCH's "Chargemaster rates" in advance of receiving emergency care; (2) self-pay patients are given no warning that they will be required to pay at Chargemaster rates that are vastly higher than the reimbursement rates for other patients signing the exact same contractual agreement; (3) SNCH's Chargemaster rates billed to self-pay patients are grossly higher than the *reasonable value* of SNCH's services; and (4) Chargemaster rates billed to self-pay patients are several times higher than SNCH's costs for providing the treatment and services rendered.

37. Additionally, pursuant to 26 U.S.C. § 501(r), a provision of the Patient Protection and Affordable Care Act which does not apply only after a patient has applied for financial assistance, tax-exempt hospitals such as SNCH must "prohibit[] the use of gross charges." 26

**VI. THE REPRESENTATIVE PLAINTIFF'S CLAIMS**

38. On or about October 9, 2014, Mr. Krobath went to SNCH's emergency room facility in Oceanside, New York, where he signed SNCH's standard form Contract and received emergency screening, stabilization, and treatment/services. He was a self-pay patient at the time of the hospital visit.

39. In obtaining treatment/services from SNCH, Mr. Krobath reasonably expected to be billed and to pay at the same rates as other emergency care patients signing the same Contract and receiving similar emergency care at the same facilities. Mr. Krobath, at the time, had no knowledge of what a hospital's Charge Description Master was, no reason to believe that the rates contained in SNCH's Charge Description Master would be artificially inflated and grossly excessive, and no reason to believe that he would be billed and required to pay at unconscionable rates that grossly exceeded the Hospital's costs of providing treatment and services. Mr. Krobath certainly had no reason to believe he would be required to pay more than the *reasonable value* of the treatment/services received, or that the Hospital would maintain egregious billing practices that it would conceal from him.

40. The total payment amount billed to Mr. Krobath after his discharge was \$7,137.79 (exclusive of physicians' charges, other non-hospital charges, and state-mandated surcharges), and upon information and belief, such amount was based on 100% of SNCH's Chargemaster

---

<sup>10</sup> It must be emphasized that Mr. Krobath is not asserting any private right of action under IRC § 501(r). Rather, Mr. Krobath maintains that the statute confirms the reasonable expectations of SNCH's patients that they will not be billed at artificially inflated and grossly excessive rates. The statute, at it currently stands, is part of "Obamacare" and is directly applicable to SNCH's billing for all emergency care patients, not just low income patients. Although various hospital associations have asserted that there was an *unstated* intent of Congress to limit the applicability of this IRS regulation to low income patients, and that Congress's failure to so limit the regulation was inadvertent, the billing prohibition, as it currently stands, prohibits chargemaster billing for all self-pay emergency care patients. Public hearings have been held, but no changes have, as yet, been forthcoming to the existing wording of the regulation.



rates. Mr. Krobath is informed and believes and thereon alleges that such amount was substantially greater than anything that could be reasonably considered to be (1) SNCH's regular charges for such treatment/services, and/or (2) the *reasonable value* of such services. Mr. Krobath is further informed and believes that the billed charges were grossly excessive, unfair, and unconscionable, and out of proportion to SNCH's actual costs in providing such treatment/services. Mr. Krobath has not paid this excessive bill but is willing to make payment once the *reasonable value* of SNCH's services is established.

## **VII. CLASS ACTION ALLEGATIONS**

41. Mr. Krobath brings this action on behalf of himself and a class of all other persons similarly situated, defined as follows:

All individuals who were billed at the Hospital's full Chargemaster rates for emergency screening, stabilization, and/or treatment/services at one of SNCH's emergency care facilities in New York State and who did not have their payments made by an insurer or government health care program (the "Class").

Excluded from the Class are those individuals who paid nothing on their accounts and whose balances have been written off in full without being subject to ongoing collection efforts.

Also excluded from the Class are Defendants, any officers or directors thereof, together with the legal representatives, heirs, successors, or assigns of any Defendant, and any judicial officer assigned to this matter and his or her immediate family.

42. This action has been brought and may properly be maintained as a class action, satisfying the numerosity, commonality, typicality, adequacy, and superiority requirements. Mr. Krobath seeks to represent an ascertainable Class with a well-defined community of interest in the questions of law and fact involved in this matter.

43. The members of the Class are so numerous that joinder of all members of the Class is impractical. Mr. Krobath is informed and believes, and thereon alleges, that the Class consists of at least hundreds of persons.

44. There are questions of law and fact common to the Class, including, but not limited to:

(a) Whether SNCH's Contract requires self-pay patients to pay for SNCH's emergency care at its Chargemaster rates, as SNCH contends, or for the *reasonable value* of the services provided, as Mr. Krobath contends;

(b) Whether SNCH had a policy and practice of pricing, billing and seeking payment from self-pay patients for emergency treatment/services at substantially higher rates than those for other patients signing the same Contract and receiving similar emergency treatment/services;

(c) Whether SNCH had a policy and practice of "failing to inform" and/or "concealing" from its self-pay patients its intention to bill and seek payment from self-pay patients at rates substantially higher than the reimbursement rates for other categories of patients signing the same Contract and receiving similar emergency treatment/services;

(d) Whether SNCH's policy and practice of billing and requiring payment from self-pay emergency care patients at rates substantially higher than those of other patients signing the same Contract and receiving similar emergency treatment/services is unfair, unreasonable and/or unlawful under any of the causes of action asserted herein;

(e) Whether SNCH's policy and practice of billing and requiring payment from self-pay emergency care patients at rates substantially higher than those of other patients signing the same Contract and receiving similar emergency treatment/services is a violation of New York's consumer protection statutes;

(f) Whether SNCH's pricing, billing, and collection practices as to Mr. Krobath and the Class are unfair, unconscionable, deceptive and/or illegal; and

(g) Whether the foregoing acts and conduct of SNCH render SNCH liable to

Mr. Krobath and the Class for restitution, injunctive relief, declaratory relief, and/or damages.

45. The claims of Mr. Krobath are typical of the claims of the Class, and Mr. Krobath is a member of the Class as defined. He has suffered actual injury and harm and is likely to continue to suffer actual injury and harm due to the unfair, unreasonable, and unconscionable pricing, billing, and collection practices of SNCH.

46. Mr. Krobath will fairly and adequately represent and protect the interests of the Class. Mr. Krobath shares the same interests as all Class members because Mr. Krobath's claims and losses are typical of those of other Class members. Mr. Krobath has retained competent class counsel who are experienced in class action litigation and who will fairly and adequately protect the interests of the Class members.

47. Questions of law and/or fact common to the Class, identified above, predominate over any questions affecting only individual Class members.

48. At a bare minimum, each self-pay patient visiting an SNCH emergency department and signing SNCH's Contract is entitled to know whether the Contract requires payment at SNCH's artificially inflated and grossly excessive Chargemaster rates (as SNCH asserts), or for no more than the *reasonable value* of the treatment/services received (as Mr. Krobath asserts). This critical issue, essential to every Class member, should be interpreted the same for all self-pay emergency care patients presenting at SNCH's facilities. It would be unfair and unreasonable to require that each patient be individually forced to confront the Hospital's collection department over the critical issue of financial liability, or be forced to individually litigate this basic question in a court of law. Nor is it reasonable to require that every self-pay patient be forced, as a prerequisite to seeking a reasonable payment rate or avoiding SNCH's artificial and grossly excessive Chargemaster rates, to have to apply for financial assistance and

submit a substantial amount of highly personal and private financial and personal information, particularly when such information is provided to unknown entities, including numerous unknown county, state, and hospital employees, and particularly given the highly confidential nature of the financial and personal information which is specifically protected under HIPAA and other regulations in this day of financial and identity theft.

49. A class action is superior to other available methods, and indeed the only possible method, for the fair and efficient adjudication of this litigation, since joinder of all Class members is impracticable. Not only is every self-pay patient entitled to know whether his or her financial liability is for SNCH's full billing at Chargemaster rates or only for the *reasonable value* of treatment/services received, but most patient bills are modest in relation to the huge expense and nearly impossible burden of individual litigation necessitated by SNCH's wrongful conduct. Under such circumstances, it would be impossible for Class members to efficiently redress their wrongs on an individual basis or protect themselves from collection activity. Furthermore, even if some Class members could afford such individual litigation, the court system would substantially benefit from a class action, particularly since medical bills are a frequent source of legal contention, and it is widely recognized that many individuals are forced into bankruptcy as a result of excessive medical bills. Further, individualized litigation would present the potential for inconsistent or contradictory judgments and magnify the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefit of comprehensive supervision by a single court, as well as economy of scale and expense.

50. SNCH has acted or refused to act on grounds generally applicable to all the members of the Class, particularly with its interpretation of its own Contract, and its systemwide policy of pricing, billing, and seeking collection from self-pay patients at its Chargemaster rates,

thereby making final injunctive/declaratory relief concerning the Class as a whole appropriate.

**FIRST CAUSE OF ACTION**  
**For Negligent Concealment**

51. Mr. Krobath herein repeats, reiterates, and realleges each and every allegation contained in the preceding paragraphs, with the same force and effect as though the same were set forth at length herein.

52. Mr. Krobath and other self-pay emergency care patients signing SNCH's standard, adhesive Contract reasonably expected and relied on their reasonable belief that they would be billed at the same rates as those applicable to other patients signing the same Contract and receiving similar emergency treatment/services, and/or reasonably expected to be billed at rates which reflected no more than the *reasonable value* of the treatment and services rendered. Additionally, at the time of signing the Contract, Mr. Krobath and other self-pay patients were certainly not expecting to be billed at the artificial and grossly excessive rates for which they were subsequently billed.

53. SNCH's conduct constitutes negligent concealment in that SNCH made false and misleading omissions as to material facts. Specifically, SNCH fails to inform and/or conceals from its self-pay emergency care patients SNCH's uniform policy of billing and seeking collection from self-pay patients of rates which are several times higher than reimbursement rates from other categories of patients signing the same Contract, and several times higher than the *reasonable value* of the treatment and services provided. This practice is particularly egregious since (1) self-pay emergency care patients have no opportunity to view SNCH's "Chargemaster rates" in advance of receiving emergency care; (2) self-pay patients are given no warning that they will be required to pay at rates that are vastly higher than the reimbursement

rates for other patients signing the exact same contractual agreement and receiving the same treatment/services; (3) the Chargemaster rates billed to self-pay patients are grossly higher than the *reasonable value* for SNCH's services; (4) the Contract's Financial Liability provision, by misleading self-pay patients and suggesting that the Hospital has fixed standards for charging all patients in the same manner and failing to note any differences in pricing methodology between patients, creates a duty of disclosure as to the pricing differences between self-pay patients and other emergency care patients; and (5) the Chargemaster rates billed to self-pay patients are so high relative to SNCH's internal costs for providing the treatment and services rendered as to be unconscionable.

54. SNCH's conduct also constitutes negligent concealment in that SNCH made representations containing false and misleading omissions as to material facts. Specifically: (1) SNCH provides a Contract that contains confusing, conflicting, and unintelligible provisions, including but not limited to a financial liability provision that purports to be applicable to all signing patients when it is not; and (2) SNCH bills self-pay patients at Chargemaster rates, when its adhesive Contract, as a result of its lack of a certain pricing term, unconscionability, or otherwise, does not permit billing at such rates.

55. SNCH made these omissions, when it (and it alone) knew or should have known the true state of material facts.

56. SNCH's omissions were made with the intent to induce Mr. Krobath and Class members to rely upon them.

57. Mr. Krobath and Class members were unaware of the true facts, and they acted in reliance upon SNCH's omissions and were justified in so relying.

58. The amount of a patient's billings and the costs of treatment are material factors for all self-pay patients. These facts are material to a patient's decision to remain and accept care

at grossly inflated prices.

59. SNCH owed Mr. Krobath and Class members a duty to disclose its billing practices, as set forth herein, based on one or more of the following facts:

- a) The Hospital bills its emergency care patients at its Chargemaster rates.
- b) Chargemaster rates are grossly inflated over the Hospital's costs, here, over three times the actual costs to the Hospital of providing such services.
- c) Chargemaster rates are not available to patients in an emergency care setting, and would be meaningless to a patient in any case.
- d) Virtually no patients actually pay the Hospital at its Chargemaster rates.
- e) The purpose of ever-expanding Chargemaster rates is to increase third party reimbursement rates, such as outlier payments from Medicare, or claiming larger community service benefits provided by the Hospital, which are stated at Chargemaster rates.
- f) Chargemaster rates are not controlled or regulated.
- g) Virtually nobody is expected to pay at Chargemaster rates.
- h) There is a vast disparity between the reimbursement rates of insured patients and the Chargemaster rates.
- i) The Hospital claims that all patients are "charged" the same, which is false. The Hospital's claim that all patients are "charged" the same is based on a distortion of the normal meaning of the word "charged." Thus, the Hospital's claim that everyone is "charged" the same, but not required to "pay" the same, is highly misleading.
- j) The Hospital's Contract is both intentionally and negligently misleading, in that it contains the same financial liability provisions for all patients, thus implying that

all patients are subject to the same financial liability, which is not true.

- k) The Hospital's Contract is both intentionally and negligently misleading in that it conceals that fact that the financial liability for the vast majority of patients, including Medicare, Medicaid, and commercially insured patients, are based on pricing schedules which are not even mentioned in the contract.
- l) The Hospital's Contract is both intentionally and negligently misleading in that it conceals the huge pricing disparity between self-pay patients and the vast majority of patients who are not self-pay.
- m) The price that a patient will be charged for Hospital emergency services is clearly material to a "reasonable patient" who is on the hook for the payment of such costs, and would undoubtedly be a factor in a reasonable patient's authorizing the Hospital to provide services and treatment.
- n) The billing practices of hospitals, and how they arrive at their hospital bills, are unknown to patients.
- o) Very few individuals have even the slightest knowledge of what a "charge description master" is, or how it operates, or where it can be found.
- p) Hospital pricing is kept very secretive. Indeed, the regulations surrounding HIPAA and the confidentiality of hospital rate structures guarantee that patients have no basic understanding of how hospitals charge their patients and the huge disparity between expected reimbursements from one category of patients to another.
- q) The charge-to cost ratios of a hospital (i.e., the Chargemaster rates for treatment and services divided by the actual costs of providing such treatment and services) are so large that the profit margin for a hospital that was paid the Chargemaster



rates would be obscene.

60. But for the alleged conduct of SNCH in concealing from Mr. Krobath and other similarly situated self-pay patients the billing practices of SNCH, Mr. Krobath would not have remained at the Hospital and obtained the services/care that were provided by the Hospital.

61. As a direct and proximate result of SNCH's omissions, Mr. Krobath and Class members have been damaged in an amount to be determined at trial. Not only have Mr. Krobath and Class members been damaged in being obligated to pay unreasonable, unfair and unconscionable debts, but, as alleged above, Mr. Krobath has incurred excessive medical bills payable to SNCH as a result of SNCH's conduct, and has incurred costs as a result of being the subject of ongoing collection efforts by SNCH. Mr. Krobath is informed and believes, and thereon alleges, that other Class members have similarly paid and/or become obligated to pay excessive and artificially inflated medical bills as a result of SNCH's omissions, as set forth herein.

62. As a result of the aforementioned conduct, Mr. Krobath and Class members are entitled to damages in an amount to be determined at trial.

**SECOND CAUSE OF ACTION**  
**For Intentional Concealment**

63. Mr. Krobath herein repeats, reiterates, and realleges each and every allegation contained in the preceding paragraphs, with the same force and effect as though the same were set forth at length herein.

64. Mr. Krobath and other self-pay emergency care patients signing SNCH's standard, adhesive Contract reasonably expected and relied on their reasonable belief that they would be billed at the same rates as those applicable to other patients signing the same Contract and receiving similar emergency treatment/services, and/or reasonably expected to be billed at rates

which reflected no more than the *reasonable value* of the treatment and services rendered.

Additionally, at the time of signing the Contract, Mr. Krobath and other self-pay patients were certainly not expecting to be billed at the artificial and grossly excessive rates for which they were subsequently billed.

65. SNCH's conduct constitutes intentional concealment in that SNCH made false and misleading omissions as to material facts. Specifically, SNCH fails to inform and/or conceals from its self-pay emergency care patients SNCH's uniform policy of billing and seeking collection from self-pay patients of rates which are several times higher than reimbursement rates from other categories of patients signing the same Contract, and several times higher than the *reasonable value* of the treatment and services provided. This practice is particularly egregious since (1) self-pay emergency care patients have no opportunity to view SNCH's "Chargemaster rates" in advance of receiving emergency care; (2) self-pay patients are given no warning that they will be required to pay at rates that are vastly higher than the reimbursement rates for other patients signing the exact same contractual agreement and receiving the same treatment/services; (3) the Chargemaster rates billed to self-pay patients are grossly higher than the *reasonable value* for SNCH's services; (4) the Contract Financial Liability provision, by misleading self-pay patients and suggesting that the Hospital has fixed standards for charging all patients in the same manner and failing to note any differences in pricing methodology between patients, creates a duty of disclosure as to the pricing differences between self-pay patients and other emergency care patients; and (5) the Chargemaster rates billed to self-pay patients are so high relative to SNCH's internal costs for providing the treatment and services rendered as to be unconscionable.

66. SNCH's conduct also constitutes intentional concealment in that SNCH made representations containing false and misleading omissions as to material facts. Specifically: (1)

SNCH provides a Contract that contains confusing, conflicting, and unintelligible provisions, including but not limited to a financial liability provision that purports to be applicable to all signing patients when it is not; and (2) SNCH bills self-pay patients at Chargemaster rates, when its adhesive Contract, as a result of its lack of a certain pricing term, unconscionability, or otherwise, does not permit billing at such rates.

67. SNCH made these omissions, when it (and it alone) knew the true state of material facts.

68. SNCH's omissions were made with the intent to induce Mr. Krobath and Class members to rely upon them.

69. Mr. Krobath and Class members were unaware of the true facts, and they acted in reliance upon SNCH's omissions and were justified in so relying.

70. The amount of a patient's billings and the costs of treatment are material factors for all self-pay patients. These facts are material to a patient's decision to remain and accept care at grossly inflated prices.

71. SNCH owed Mr. Krobath and Class members a duty to disclose its billing practices, as set forth herein, based on one or more of the following facts:

- a) The Hospital bills its emergency care patients at its Chargemaster rates.
- b) Chargemaster rates are grossly inflated over the Hospital's costs, here, over three times the actual costs to the Hospital of providing such services.
- c) Chargemaster rates are not available to patients in an emergency care setting, and would be meaningless to a patient in any case.
- d) Virtually no patients actually pay the Hospital at its Chargemaster rates.
- e) The purpose of ever-expanding Chargemaster rates is to increase third party reimbursement rates, such as outlier payments from Medicare, or claiming larger

community service benefits provided by the Hospital, which are stated at Chargemaster rates.

- f) Chargemaster rates are not controlled or regulated.
- g) Virtually nobody is expected to pay at Chargemaster rates.
- h) There is a vast disparity between the reimbursement rates of insured patients and the Chargemaster rates.
- i) The Hospital claims that all patients are “charged” the same, which is false. The Hospital’s claim that all patients are “charged” the same is based on a distortion of the normal meaning of the word “charged.” Thus, the Hospital’s claim that everyone is “charged” the same, but not required to “pay” the same, is highly misleading.
- j) The Hospital’s Contract is intentionally misleading, in that it contains the same financial liability provisions for all patients, thus implying that all patients are subject to the same financial liability, which is not true.
- k) The Hospital’s Contract is intentionally misleading in that it conceals that fact that the financial liability for the vast majority of patients, including Medicare, Medicaid, and commercially insured patients, are based on pricing schedules which are not even mentioned in the contract.
- l) The Hospital’s Contract is intentionally misleading in that it conceals the huge pricing disparity between self-pay patients and the vast majority of patients who are not self-pay.
- m) The price that a patient will be charged for Hospital emergency services is clearly material to a “reasonable patient” who is on the hook for the payment of such costs, and would undoubtedly be a factor in a reasonable patient’s authorizing the

Hospital to provide services and treatment.

- n) The billing practices of hospitals, and how they arrive at their hospital bills, are unknown to patients.
- o) Very few individuals have even the slightest knowledge of what a “charge description master” is, or how it operates, or where it can be found.
- p) Hospital pricing is kept very secretive. Indeed, the regulations surrounding HIPAA and the confidentiality of hospital rate structures guarantee that patients have no basic understanding of how hospitals charge their patients and the huge disparity between expected reimbursements from one category of patients to another.
- q) The charge-to cost ratios of a hospital (i.e., the Chargemaster rates for treatment and services divided by the actual costs of providing such treatment and services) are so large that the profit margin for a hospital that was paid the Chargemaster rates would be obscene.

72. But for the alleged conduct of SNCH in concealing from Mr. Krobath and other similarly situated self-pay patients the billing practices of SNCH, Mr. Krobath would not have remained at the Hospital and obtained the services/care that were provided by the Hospital.

73. As a direct and proximate result of SNCH’s omissions, Mr. Krobath and Class members have been damaged in an amount to be determined at trial. Not only have Mr. Krobath and Class members been damaged in being obligated to pay unreasonable, unfair and unconscionable debts, but, as alleged above, Mr. Krobath has incurred excessive medical bills payable to SNCH as a result of SNCH’s conduct, and has incurred costs as a result of being the subject of ongoing collection efforts by SNCH. Mr. Krobath is informed and believes, and thereon alleges, that other Class members have similarly paid and/or become obligated to pay

excessive and artificially inflated medical bills as a result of SNCH's omissions, as set forth herein.

74. As a result of the aforementioned conduct, Mr. Krobath and Class members are entitled to damages in an amount to be determined at trial.

75. In addition, because Mr. Krobath is informed and believes, and thereon alleges, that SNCH acted with oppression, fraud, and/or malice in engaging in the above-described conduct, Mr. Krobath and members of the Class are not only entitled to the damages as set forth above, but also to exemplary and punitive damages in a sum not presently known, but sufficient for the sake of example and by way of deterring SNCH and others from further such actions.

**THIRD CAUSE OF ACTION**  
**For Unfair and Deceptive Business Acts and Practices**  
**(N.Y. Gen. Bus. Law §349)**

76. Mr. Krobath herein repeats, reiterates, and realleges each and every allegation contained in the preceding and subsequent paragraphs, with the same force and effect as though the same were set forth at length herein.

77. Mr. Krobath is informed and believes, and thereon alleges, that SNCH's conduct described herein constitutes deceptive acts or practices in the conduct of a business, trade or commerce and/or in the furnishing of services within the meaning of New York's Consumer Protection Statute, Gen. Bus. Law § 349. This is conduct affecting a broad class of consumers and thus is "consumer-oriented conduct" within the meaning of said statute and the case law interpreting it.

78. Mr. Krobath and other self-pay emergency care patients signing SNCH's standard, adhesive Contract reasonably expected and relied on their reasonable belief that they would be billed at the same rates as those applicable to other patients signing the same Contract and receiving similar emergency treatment/services, and/or reasonably expected to be billed at rates

which reflected no more than the *reasonable value* of the treatment and services rendered.

Additionally, at the time of signing the Contract, Mr. Krobath and other self-pay patients were certainly not expecting to be billed at the artificial and grossly excessive rates for which they were subsequently billed.

79. SNCH unfairly and unlawfully charges its self-pay emergency care patients unfair, unreasonable and/or discriminatory rates which are significantly higher than those reimbursed by governmentally and privately insured patients, and significantly higher than the *reasonable value* of the treatment and services provided. Furthermore, SNCH fails to inform and/or conceals from these self-pay patients SNCH's uniform policy of billing and seeking collection from self-pay patients of rates which are several times higher than reimbursement rates from other categories of patients signing the same Contract, and several times higher than the *reasonable value* of the treatment and services provided. This practice is particularly egregious since (1) self-pay emergency care patients have no opportunity to view SNCH's "Chargemaster rates" in advance of receiving emergency care; (2) self-pay patients are given no warning that they will be required to pay at rates that are vastly higher than the reimbursement rates for other patients signing the exact same contractual agreement and receiving the same treatment/services; (3) the Chargemaster rates billed to self-pay patients are grossly higher than the *reasonable value* for SNCH's services; (4) the Contract's Financial Liability provision, by misleading self-pay patients and suggesting that the Hospital has fixed standards for charging all patients in the same manner and failing to note any differences in pricing methodology between patients, creates a duty of disclosure as to the pricing differences between self-pay patients and other emergency care patients; and (5) the Chargemaster rates billed to self-pay patients are so high relative to SNCH's internal costs for providing the treatment and services rendered as to be unconscionable.

80. SNCH's conduct constitutes "deceptive acts and practices" within the meaning of the statute in that: (1) SNCH fails to inform and/or conceals from its self-pay patients its uniform policy to bill and require payment from self-pay patients at rates several times higher than rates paid by other patients signing the same Contract and agreeing to the same liability provision, as set forth herein; (2) SNCH provides a Contract that contains confusing, conflicting, and unintelligible provisions, including but not limited to a financial liability provision that purports to be applicable to all signing patients when it is not; (3) SNCH bills self-pay patients at Chargemaster rates, when its adhesive Contract, as a result of its lack of a certain pricing term, unconscionability, or otherwise, does not permit billing at such rates; and (4) SNCH bills and seeks to collect from self-pay patients billed charges that are so excessive and unreasonable as to be unconscionable.

81. The amount of a patient's billings and the costs of treatment are material factors for all self-pay patients.

82. As a direct and proximate result of SNCH's unfair and deceptive business acts and practices, Mr. Krobath and Class members have suffered injury in fact. Not only have Mr. Krobath and Class members suffered injury in being obligated to pay unreasonable, unfair and unconscionable debts, but, as alleged above, Mr. Krobath has incurred excessive medical bills payable to SNCH as a result of SNCH's unfair and unlawful business practices, and has incurred costs as a result of being the subject of ongoing collection efforts by SNCH. Mr. Krobath has therefore lost money or property due to SNCH's deceptive acts. Mr. Krobath is informed and believes, and thereon alleges, that other Class members have similarly paid and/or become obligated to pay excessive and artificially inflated medical bills as a result of SNCH's unfair and deceptive business acts and practices.

83. As described herein, SNCH's practices offend established public policies, and are



immoral, unethical, oppressive, and unscrupulous.

84. As a result of the aforementioned conduct, Mr. Krobath and Class members are entitled to actual and statutory damages (including treble damages) under Gen. Bus. Law §349(h), punitive damages, equitable relief, including restitution of all charges and disgorgement, the cessation of efforts to collect excess unpaid charges, and permanent injunctive relief to prevent such conduct in the future.

**FOURTH CAUSE OF ACTION**  
**For Declaratory Judgment**

85. Mr. Krobath herein repeats, reiterates, and realleges each and every allegation contained in the preceding paragraphs, with the same force and effect as though the same were set forth at length herein.

86. SNCH contends that self-pay patients, under its current Contract terms, are obligated to pay the facility's billed charges as contained in SNCH's Charge Description Master. Mr. Krobath, on the other hand, contends that this interpretation of its Contract terms, as they currently exist, is invalid and that the Contract only requires self-pay patients to pay for treatment/services at a *reasonable rate*. Specifically, Mr. Krobath contends that equitable principles require self-pay patients to pay for treatment/services at a *reasonable rate*, and the Contract itself, due to its vague and ambiguous payment liability provisions, requires payment for no more than the *reasonable value* of the treatment/services rendered.

87. Since these two interpretations of SNCH's Contracts, as they currently stand ("Chargemaster rates" or "Reasonable rates"), are the only logical interpretations applicable to self-pay patients, and the financial liability of every self-pay patient is an important matter for him or her (particularly since the entire bill is the patient's responsibility), a determination as to which contractual interpretation is legally required (i.e., that of the Hospital or that of Mr.

Krobath) can and should be made by this Court, and should be equally applicable to all Class members. Such interpretation can undoubtedly be made by this Court by way of a simple summary proceeding.

88. Mr. Krobath and members of the Class have an absolute right to know their right, duties, and obligations under the contract they have signed, and an actual dispute exists with regard to the interpretation of the contracts financial liability provision.

89. Mr. Krobath further alleges that it is completely unjust and unreasonable for every self-pay patient to face the prospect of either paying for the treatment/services at SNCH's artificial and grossly excessive Chargemaster rates, or being required to individually negotiate and/or litigate the actual contractual amount due with SNCH's collection department.

90. Mr. Krobath and members of the Class are entitled to a declaration that SNCH's contract does not permit it to bill and to demand payment from uninsured emergency care patients at its Chargemaster rates.

91. Mr. Krobath and members of the Class are further entitled to a declaration that they are liable to SNCH, under their contracts, for no more than the *reasonable value* of the treatment/services provided.

92. Because SNCH's "Authorization for Treatment" is an adhesive contract drafted by SNCH and imposed upon its uninsured emergency care patients, any ambiguity in the pricing term of the contract must be interpreted against SNCH. Further, since the contract does not describe, define or identify any pricing schedule for its Financial Liability provision, the legal requirement that an ambiguous term must be interpreted against the drafter of a contract militates against any argument by SNCH that an uninsured patient agrees to make payment at its artificially inflated "Chargemaster rates."

93. A declaration as sought above is necessary and appropriate, since an existing,

actual and immediate dispute exists between Mr. Krobath and SNCH over which of these two alternate interpretations of the Contract is applicable. A declaratory judgment as sought herein would terminate the uncertainty and controversy and allow Mr. Krobath and the Class to obtain a determination of their legal rights and obligations under the Contract.

94. Mr. Krobath and members of the Class are also entitled to a declaration that SNCH's billing practices as they relate to Class members are unfair, unreasonable, and illegal.

95. Additionally, Mr. Krobath and members of the Class are further entitled to a declaration that neither the Contract nor any other law or statute establishes a duty on the part of a self-pay patient to seek out and apply for Charity or Financial Aid as a prerequisite to legally challenging the amount of a Hospital bill that the patient deems to be unfair, unreasonable, or unlawful.

96. Mr. Krobath and the Class are entitled to a declaration of their rights and obligations under the Contract since this is a matter affecting them all. A declaration as sought above will be of substantial, direct and immediate benefit to Mr. Krobath and the Class since they will no longer be subject to SNCH's efforts to bill and collect charges in excess of the reasonable value of their services, and those who have paid such excess charges may be entitled to seek restitution if they so desire. Furthermore, such declaration will also benefit future uninsured emergency care patients of SNCH who are subject to the same or a similar Contract, including existing Class members who may need future emergency care from SNCH.

97. Furthermore, Mr. Krobath and members of the Class are entitled to injunctive relief permanently enjoining SNCH from seeking, under its current financial liability provision, to bill and collect the full amount of its billed charges at Chargemaster rates from Mr. Krobath and members of the Class.

#### **PRAYER FOR RELIEF**

WHEREFORE, Mr. Krobath, on his own behalf and on behalf of the Class, prays for the following relief against Defendants and each of them:

1. On all causes of action, for an order certifying that this action may be maintained as a class action against SNCH, appointing Mr. Krobath and his counsel to represent the Class, and directing that reasonable notice of this action be given by SNCH to the members of the Class;
2. On the first, second and third causes of action, for an award of damages, in accordance with proof at trial;
3. On the second and third causes of action, for an award of punitive damages, in accordance with proof at trial;
4. On the third and fourth causes of action, for an award of restitution and disgorgement, in accordance with proof at trial;
5. On the third cause of action, (1) for an order declaring that SNCH's operative Contracts require payment for the screening, stabilization and emergency treatment/services furnished to self-pay patients at no more than the *reasonable value* of the services rendered, (2) for an injunction to cease efforts to collect unpaid excess charges, and (3) for an order enjoining SNCH from continuing to engage in the conduct alleged herein;
6. On the fourth cause of action for a declaration or declarations as sought therein and for an order enjoining SNCH from continuing to engage in the conduct alleged herein;
7. On all causes of action, for an order awarding Mr. Krobath and members of the Class the costs of their suit, including, but not limited to, reasonable attorneys' fees and expert fees; and

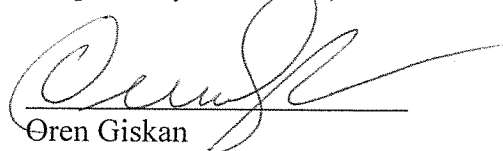
8. For such other and further relief as may be just and proper.

**DEMAND FOR JURY TRIAL**

Mr. Krobath, on behalf of himself and the Class, respectfully requests trial by jury on all claims so triable.

DATED: April 2, 2015

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Oren Giskan", written over a horizontal line.

Oren Giskan  
GISKAN SOLOTAROFF  
ANDERSON & STEWART LLP  
11 Broadway, Suite 2150  
New York, New York 10004  
Tel: (212) 847-8315