

INTRODUCTION

1. On December 31, 2018, Kenneth Keslar II (“Keslar”) visited the emergency department at Baptist Emergency Hospital - Shavano Park (“BEHSP”). Keslar had a health benefit plan through Blue Cross Blue Shield (“BCBS”). BEHSP was a participating provider in Keslar’s health benefit plan’s provider network. Keslar made sure to go to an in-network emergency department in order to contain costs. Keslar paid \$350 at the time of service.

2. Nine months later, Keslar received his first billing statement from BEHSP. He was shocked to discover that the charges for “LABORATORY” totaled \$4,526.44. The bill did not break down the charges associated with the lab work. Mrs. Daniela Keslar sought an explanation of the charges and spent more than 130 hours pursuing a resolution—one that has yet to come.

3. After repeated inquiries, Keslar discovered that of the \$4,526.44 total, \$3,825.55 derived from “BMP” and “LFT” tests performed. The clinician who treated Keslar had ordered, among other tests, a “BMP (includes CK)” and a “LFT (includes amylase).” “BMP” is the abbreviation for Basic Metabolic Panel, one of the most common lab tests ordered by health care providers. “LFT” is the abbreviation for Liver Function Test, another common lab panel or group of tests ordered together.

4. Digging into the patient detail bill, Keslar learned that the panels were not billed as such; instead, the component tests were individually billed (i.e., separating the common panels into their smaller component tests). Reviewing the bills and referring to a “Pricing Transparency Document” publicly posted on the Baptist Emergency Hospital website, Keslar understood that this practice significantly increases the cost to the patient.

5. Keslar believed that BEHSP’s practice was misleading and deceptive, and calculated to increase payment. The practice is known as “unbundling.”

6. “Unbundling” occurs when multiple procedure codes are billed for a group of procedures that are normally covered by a single comprehensive code. The Office of the Attorney General for Texas has identified “‘unbundling,’ or billing each stage of a procedure as if it were a separate procedure” as a type of health care fraud.¹

7. Unbundling is a particular concern in lab billing. Blood work is frequently done in preset “panels,” where several related tests are requested with a single testing order and completed with a single patient specimen. Commonly ordered panels of lab tests have Current Procedural Terminology (“CPT”) codes both for the panel as a whole (i.e., a single code for the group of tests) and for the individual tests within the panel. Testing panels are typically less costly to complete than if each test were ordered and performed individually, and thus reimbursement for a panel is typically lower than what the total reimbursement would have been if each test within the panel was billed individually.

8. Unbundling happens when a laboratory bills separately for some or all tests analyzed as part of a panel, rather than billing for the panel. Tests may be intentionally unbundled in an effort to maximize reimbursement.

9. A variation on unbundling happens when a facility performs some but not all of the tests in a panel in order to circumvent the panel and justify billing for the individual tests, which results in higher reimbursement than if the full panel was performed. This “twist” on unbundling is what happened in this case.

10. Texas law allows for recovery under principles of unjust enrichment where one has obtained a benefit from another by fraud or the taking of undue advantage. Texas law similarly

¹ The Attorney General of Texas, “Health Care Fraud and Abuse *Learn How to recognize, report, and protect yourself from health care fraud and abuse.*” available at <https://www.texasattorneygeneral.gov/consumer-protection/health-care/health-care-fraud-and-abuse> (last visited September 24, 2020).

provides for relief where one has failed to disclose material facts that the other party to a transaction didn't know and didn't have an equal opportunity to discover, leading to injury that might have been avoided had the whole truth been disclosed. And where one party to a transaction lacks bargaining ability or meaningful choice and enters into an unfairly one-sided contract, again, Texas law provides for relief.

11. Keslar is entitled to relief, and he is not alone. Keslar brings this putative class action on behalf of himself and all others who have been injured by Defendants' unfair and unlawful unbundling scheme, as set out in more detail below.

JURISDICTION AND VENUE

12. This Court has personal jurisdiction over Defendants because they conduct business in this jurisdiction and the actions giving rise to this Petition occurred in this jurisdiction.

13. This Court has subject matter jurisdiction over this action pursuant to Tex. Govt. Code §24.007(a) and (b). The matter in controversy, exclusive of interest and costs, exceeds \$500.

14. Venue is proper because Defendants transact business in Bexar County, a substantial part of the events giving rise to Plaintiff's claims occurred in Bexar County, and Defendants caused harm to Plaintiff and putative class members residing in Bexar County.

PARTIES

15. Plaintiff Kenneth Keslar II currently resides in Ashtabula County, Ohio. He was a resident of San Antonio, Texas at the time of his visit to BEHSP.

16. Defendant Emerus / BHS SA Thousand Oaks, LLC is a Texas entity that does business as, among other d/b/a names, Baptist Emergency Hospital - Shavano Park. It has entered an appearance in this case and may be served by service on its attorney of record pursuant to Tex. R. Civ. Pro. 21a.

17. BEHSP is one of eight Baptist Emergency Hospital facilities in the San Antonio area. These facilities are operated by Emerus Hospital Partners, LLC as joint ventures with hospital partner Baptist Health System.

18. Baptist Health System is one of the largest hospital systems in San Antonio, where it is based, and advertises itself as a “trusted provider of health care in San Antonio and South Texas.” Baptist Health System is part of Tenet Healthcare, which is based in Dallas, Texas.

19. Defendant Emerus Holdings, Inc. (“Emerus Holdings”) is a privately held corporation based in the Houston, Texas area and incorporated in Delaware. It has entered an appearance in this case and may be served by service on its attorney of record pursuant to Tex. R. Civ. Pro. 21a

20. Micro-hospitals are designed to accommodate overnight stays, but are primarily used to assess and treat lower acuity patients; their core services typically include emergency care, labs, and imaging. Analysts have likened micro-hospitals to freestanding emergency departments. Like freestanding emergency rooms, they can handle many emergencies and may offer a more convenient location or shorter waiting times compared to a regular hospital emergency department. However, treatment costs are higher than they would be at an urgent care center, and consumers may not be aware of the cost of care until they receive hospital-size bills.

21. Emerus Holdings, through its subsidiaries, manages micro-hospitals, offering emergency care and diagnostic services. Emerus Holdings typically partners with established hospital systems, touting its specific expertise in operating micro-hospitals. One Emerus executive explained, for example, that micro-hospitals require unique workflows, operational strategies, and even electronic medical record design to maximize efficiency.

22. Defendant Emerus Hospital Partners, LLC (“Emerus HP”) is a subsidiary of Emerus Holdings (collectively they will be referred to as “Emerus”). Specifically, Emerus HP is one of the subsidiaries through which Emerus Holdings conducts its business of managing micro-hospitals. The website Pitchbook describes Emerus HP as a “[p]rovider of freestanding 24-hour emergency care micro-hospital services.” Emerus HP is incorporated in Texas. It has entered an appearance in this case and may be served by service on its attorney of record pursuant to Tex. R. Civ. Pro. 21a

23. Micro-hospitals can be lucrative. They cost less to build and run than a hospital, but can charge hospital-level prices, including a “facility fee.” Emerus has strategically positioned micro-hospitals in zip codes with higher median incomes and more commercial insurance coverage. One commentator, looking at the aggregate economics of Baptists Health’s joint venture with Emerus, concluded that “these hospitals make money straight out of the gate!”

24. At all times relevant to this action, Defendants were engaged in “trade” and “commerce” as defined in § 17.45(6) of the Texas Deceptive Trade Practices Act, Tex. Bus. & Com. Code § 17.41 *et seq.* (the “DTPA”), and Plaintiff and the putative class members were acting as “consumers” as defined in § 17.45(4) of the DTPA.

Plaintiff’s Bill for the “BMP” and “LFT” Tests Performed at BEHSP

25. The services performed during Plaintiff’s December 31, 2018, visit to BEHSP included laboratory testing, particularly a “BMP (includes CK)” and a “LFT (includes amylase),” as well as other tests. “BMP” is the abbreviation for Basic Metabolic Panel, one of the most common lab tests ordered by health care providers, while “LFT” is the abbreviation for Liver Function Test, another common lab panel. This panel is also called a Hepatic Function Panel.

26. Keslar didn't discover the shocking cost of lab work performed at BEHSP until nine months later, when he received a bill that included total laboratory charges amounting to \$4,526.44, with the BMP and LFT tests accounting for \$3,825.55 of this total. Both tests were ordered by the attending clinician as "panels", and the results for both tests were returned as panels.

27. But because BEHSP's "BMP (includes CK)" and "LFT (includes amylase)" each omitted a single test compared to the corresponding panels found in the CPT code set, the components of the panels were billed separately, resulting in higher charges.

28. A "basic metabolic panel" under the current CPT code system includes the following components: (1) carbon dioxide (bicarbonate); (2) chloride; (3) creatinine; (4) glucose; (5) potassium; (6) sodium; (7) urea nitrogen (BUN); and (8) calcium, ionized OR calcium; total. BEHSP's "Basic Metabolic Panel" includes the first seven components, but omits calcium, thus circumventing the CPT code bundle. BEHSP's "BMP (includes CK)" does not include all the components of a "basic metabolic test" under the CPT code set, but it does include an additional component, creatine kinase (CK), (CPK); total.

29. Similarly, a "hepatic function panel" under the current CPT code set includes seven components—(1) albumin; (2) bilirubin, total; (3) phosphatase, alkaline; (4) protein, total; (5) transferase, alanine amino (ALT) (SGPT); (6) transferase, aspartate amino (AST) (SGOT); and (7) bilirubin, direct—while BEHSP's "Hepatic Function Test" includes six components, omitting bilirubin, direct. Because BEHSP's panel only includes six of the seven component tests, they are individually billed instead of as a bundled panel. Once again, after omitting one component required for the CPT code bundle, BEHSP tacked on another component. Or, in the case of the BEHSP "Hepatic Function Test" panel, two additional components were included: glutamyltransferase, gamma (GGT); amylase. All the tests in the panel were individually billed.

30. A “Pricing Transparency Document” created on December 31, 2018, and posted on BEHSP’s website provides a price of \$753.69 for a laboratory panel billed using one of the CPT codes for a “basic metabolic panel.” Keslar was not billed using one of those CPT codes because some (7 out of 8) but not all (1 out of 8) of the tests in the panel were performed; instead, he was billed \$1,220.58 for the component tests that were performed. In a Kafkaesque result, the lab was able to *charge more for performing less work* (\$466.89 more, to be specific). The lab also charged \$295.80 for the additional component (CK) included in the BEHSP panel.²

31. The same document gives a price of \$731.75 for a “hepatic function panel” as defined by the CPT code set. But, once again, because the BEHSP “Hepatic Function Test” panel omitted one test, the remaining six tests in the panel were billed individually, resulting in higher charges than if the full panel were performed. The charges for the six unbundled component tests totaled \$1,605.35—*over twice as much as the bundled panel charge*. In addition, Keslar was billed for the two other tests that BEHSP included in the panel; BEHSP charged \$394.45 for the amylase test and \$309.37 for the GGT test.

32. Putting aside the additional tests added to the BEHSP panels,³ the unbundling of the panels, achieved by omitting a single test from each panel, increased the charges by \$1,340.98.

² Plaintiff includes information about the additional component tests inserted into the panels in order to provide comprehensive background and important context, but the specific conduct that Plaintiff challenges as violative of the law is the unbundling of these standard panels through the omission of one component test from each.

³ As previously explained, Plaintiff’s claims are not based on this conduct (i.e., the incorporation of additional component tests, which will be billed individually, into these common and routinely ordered panels), but center on Defendants’ unbundling scheme accomplished through the omission of a single component test from each panel.

33. The total charges from BEHSP came to \$8,766.08 (laboratory charges accounted for \$4,526.44). After insurance adjustments, the bill from BEHSP totaled \$2,321.49. Keslar had a high deductible health benefit plan, so he would be responsible for paying the adjusted charges.

34. If BEHSP's "BMP (includes CK)" and "LFT (includes amylase)" had actually included CPT-compliant BMP and LFT panels, then the total charges and the adjusted charges would not have been as high. Because of BEHSP's unbundling scheme, Keslar faced increased costs.

35. Keslar had received the first bill from BEHSP *nine months* after his visit, but Keslar acted promptly to try to resolve the issue, reaching out to his insurer on October 21, 2019, and then contacting BEHSP on October 22, 2019. BEHSP denied Keslar's initial request for a coding review and demanded all disputes be submitted in writing.

36. Keslar submitted a written dispute to BEHSP via certified mail. Like most patients, Keslar had no previous experience with medical coding. He invested a significant amount of time in researching and preparing the dispute.

37. BEHSP never acknowledged receipt of the written dispute, even though it was sent via certified mail and signed for by a BEHSP employee on December 6, 2019. Keslar reached out to BEHSP four times between December 6, 2019, and December 23, 2019, in an attempt to confirm receipt of the written dispute.

38. On December 23, 2019, Keslar resubmitted the written dispute via email. Keslar had to call BEHSP to confirm receipt, and receipt was verbally confirmed on December 30, 2019.

39. After repeated inquiries, Keslar finally received a response from BEHSP on February 19, 2020. BEHSP denied any wrongdoing and in the final sentences of its response letter, stated that it is "obligated" to initiate collection attempts.

40. Keslar responded on February 25, 2020, and continued to try to work with BEHSP to reach a resolution, even broaching the idea of mediation. BEHSP did not respond.

41. Keslar paid \$350 at the time of service, and later paid an additional \$1,386.47. In total, Keslar paid \$1,736.47 to BEHSP. There is a remaining balance of \$585.02. BEHSP has threatened to send the account to collections.

LABS AT BEHSP

42. Doctors and other health care providers at BEHSP are provided with a “menu” of laboratory testing options, which prominently includes BEHSP’s own testing panels.

43. Testing panels completed at BEHSP are performed by running patient specimens through a single piece of automated multi-channel equipment; in other words, the tests in a panel are ordered together in one single action, and then are performed together in one fell swoop—at the same time, utilizing a single sample.

44. However, BEHSP bills for the components rather than a bundled panel because, as explained in the response letter to Keslar, the tests run are “not a complete match to the defined panel per the CPT code” and “[w]e are unable to bill for bundled panels when those tests were not run as specifically set forth in the CPT code bundle.”

45. The letter provides no reasons for BEHSP’s inclusion and/or exclusion of specific tests in its standard panels, nor any explanation for their divergence from panels listed in the CPT manual. Additionally, it does not explain BEHSP’s decision—independent from its decision that its versions of common, nationally standardized chemistry panels would deviate in the type of tests included—to not change the name of the panels after changing the tests in the panels (e.g., BEHSP called its panel a “BMP (includes CK)” even though the panel did not include all the component tests included in a standard BMP).

46. Although BEHSP makes several references to lab equipment in its letter responding to Keslar’s concerns, the Piccolo brand blood analyzer used by BEHSP to run its BMP and HFP can be used with commercially available panels manufactured by Piccolo that conform to CPT requirements for a BMP and HFP. In other words, to the extent that “lab equipment provides different panels than those listed under the CPT Manual,” it is because BEHSP chose to offer panels that do not match the defined panels under the CPT.

47. In this way, BEHSP encourages the ordering of tests that will result in higher reimbursement.

48. Notably, the “Pricing Transparency” document posted to BEHSP’s website, as BEHSP itself acknowledged in its response letter to Keslar, did “not provide the pricing of the above referenced labs as Baptist provides them.” BEHSP further explained that “[i]nstead, it provides the pricing of those labs as if sent to an outside provider.” While BEHSP stated that “we understand your confusion and concern,” and that “we will address the misalignment...in order to ensure there is no further confusion,” the document available for download as of September 15, 2020, still does not provide the pricing of the lab panels as actually performed at BEHSP, instead providing prices for a standard “Basic metabolic panel” and “Hepatic function panel,” which BEHSP has opted not to provide.

49. Keslar is not the only one who has been impacted by the BEHSP’s unbundling scheme. On June 12, 2018, Yelp user “Martha H.” uploaded a photo of a billing statement from Baptist Emergency Hospital with charges for “LABORATORY” totaling \$4,311.16. Like the billing statement received by Keslar, it did not break down the over \$4,000 of “LABORATORY” charges any further. Martha H. started her review of BEHSP by stating the obvious: “Ridiculous bill[.]” Martha H. wrote that their visit was “only for a bacterial infection” and that she “call[ed]

ahead of time to check if we [were] in[-]network[,] which we were[.]” Presumably, Martha H. was concerned with containing costs, as Keslar was. Like Keslar, Martha H. was shocked to discover the price of lab work at BEHSP, writing, “they still charged \$4,311.16 for a blood test ?????” Martha H. wrote that she was “[n]ever going back[.]” Clearly, the fact of an unbundling scheme and BEHSP’s consequently extraordinarily high charges for routine lab work was material to Martha H., as it was to Keslar, who would have chosen to seek less costly treatment elsewhere had he known the whole truth. A reasonable patient would consider this information important in making a decision about whether to proceed with treatment at Baptist Emergency Hospital.

50. Other Yelp reviews for BEHSP complain about “getting billed thousands of dollars” and warn others to “BEWARE OF THE CHARGES YOU ARE GOING TO GET[.]”

51. Apparently, the same unbundling scheme is occurring across Baptist Emergency Hospital facilities, increasing costs to patients like Keslar and driving up the cost of health care for everyone.

CLASS ACTION ALLEGATIONS

52. Plaintiff brings this action on behalf of himself and all persons who visited a Baptist Emergency Hospital and had a “BMP” and/or “LFT” panel ordered and performed, and were then billed for the individual component tests (“Class”). Excluded from the Class are Defendants and their parents, subsidiaries, representatives, officers, directors, employees, partners, and co-ventures.

53. As alleged in this Petition, Defendants have acted and refused to act on grounds generally applicable to all the members of the Class, engaging in system-wide policies and practices at Baptist Emergency Hospitals that make relief with respect to the Class as a whole appropriate. These policies and practices include the establishment of custom chemistry panels

that initially appear to be substantially equivalent to common chemistry panels that have been standardized nationally, but in fact omit a single constituent test, allowing for “unbundling” of the panels, which results in higher reimbursement for the Defendants—and higher costs to the patients. Moreover, on information and belief, the lab ordering system or workflow is the same across locations and encourages the routine ordering of these custom panels. Defendants’ regular practice is to make partial disclosures relating to the costs of care, including through standard intake paperwork presented to emergency care patients, but, as a matter of course, Defendants do not disclose the fact of an unbundling scheme or the extraordinarily high cost of common lab work performed at Baptist Emergency Hospital.

54. This action has been brought and may properly be maintained as a class action, satisfying the numerosity, commonality, predominance, typicality, adequacy, and superiority requirements.

55. Plaintiff seeks to represent a Class with a well-defined community of interest in the questions of law and fact involved in this litigation. The proposed Class is easily ascertainable from Defendants’ billing records.

56. The members of the Class are so numerous that joinder of all Class members is impracticable. While the exact number of Class members is not known at this time (but, again, is easily ascertainable from Defendants’ regular business records), Plaintiff believes that there are thousands—or at the very least hundreds—of Class members. There are eight Baptist Emergency Hospital locations, and “BMP” and “LFT” panels are among the most commonly ordered lab tests in emergency department settings.

57. Common questions of law and fact exist as to all members of the Class and predominate over any individual question that might exist.

58. Plaintiff's claims are typical of the claims of the Class, and Plaintiff is a member of the Class as defined. He faced increased costs because of Defendants' undisclosed unbundling scheme. Keslar seeks to obtain relief for himself and the Class.

59. Keslar is a member of the Class and will fairly and adequately protect the interests of the other members of the Class. Keslar's interests align, and do not conflict, with those of other Class members. Keslar has retained counsel competent and experienced in complex consumer class action litigation, including health care consumer class actions in particular, and who will devote sufficient time and resources to litigate this matter.

60. A class action is superior to all other methods for the fair and efficient adjudication of this controversy. Since the damages suffered by the members of the Class may be relatively small in comparison to the expense and burden of individual litigation, it is virtually impossible for Keslar and members of the Class to individually seek redress. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

CAUSES OF ACTION

COUNT I – UNJUST ENRICHMENT

61. Plaintiff realleges each of the allegations set forth in the foregoing paragraphs.

62. Defendants have been unjustly enriched to the extent that they have obtained a benefit (i.e., payment of excessive charges) from Plaintiff and other Class members as part of the unbundling scheme outlined in the preceding paragraphs.

63. Defendants wrongfully secured such benefit by fraud or the taking of undue advantage, as they made partial disclosures regarding their pricing for lab work, but failed to disclose the fact of an unbundling scheme that significantly increases the cost of common lab tests.

For example, Defendants posted a “Pricing Transparency Document” that provided prices for CPT-compliant panels but did not provide prices for the non-CPT-compliant custom panels that BEHSP presented to physicians as substantially equivalent (e.g., “BMP (includes CK),” which does in fact include an additional test, CK, but does not include all the tests included in a standard BMP panel under the CPT code set).

64. Moreover, BEHSP is, at its core, an emergency department, and thus provides services to consumers at a time of unique vulnerability. Defendants take undue advantage of this vulnerability.

65. Any express contract between Keslar and BEHSP—which would derive from a form contract presented to each patient, which is unilateral in nature—does not cover the subject matter of the claim.

66. Thus, Plaintiff is entitled to a judgment in equity that Defendants be required to disgorge and pay those sums back that were obtained through their unbundling scheme.

COUNT II – UNCONSCIONABILITY

67. Plaintiff realleges each of the allegations set forth in the foregoing paragraphs.

68. In the alternative, to the extent that an express contract term does cover the subject matter of Plaintiff’s claims, it should be found unconscionable and the Court should limit its application to avoid an unconscionable result.

69. An examination of the contract formation process here reveals a lack of meaningful choice and the non-bargaining ability of the patient.

70. And an examination of the provisions in the intake paperwork at Baptist Emergency Hospitals reveals terms that are so one-sided as to be unconscionable, particularly in consideration of the circumstances existing at the time a patient is presented with the forms.

COUNT III – FRAUD BY NONDISCLOSURE

71. Plaintiff realleges each of the allegations set forth in the foregoing paragraphs.

72. Plaintiff will show that Defendants deliberately failed to disclose material facts known to Defendants that they knew Plaintiff and other Class members were ignorant of and did not have the opportunity to discover. More specifically, Defendants did not disclose the fact of an unbundling scheme nor the extraordinarily high cost of basic lab work at BEHSP.

73. Defendants had a duty to disclose such facts since they had made partial disclosures that created a false impression or voluntarily disclosed some information, creating a duty to disclose the whole truth. On the Baptist Emergency Hospital website homepage or start page, a link to a “Pricing Transparency” page is prominently displayed in a “Patient Info” dropdown menu. <https://www.baptistemergencyhospital.com>. The “Pricing Transparency” page states that “we think it is essential now more than ever to provide pricing information so that people can make informed decisions about their healthcare cost,” and that “[p]roviding visibility to the pricing of medical care services we offer is just another way we exhibit our vision and mission[.]” <https://www.baptistemergencyhospital.com/pricing-transparency>. But, as previously discussed, the pricing information provided is misleading, as it does not provide the pricing of common tests as actually ordered and performed at Baptist Emergency Hospital locations. While Baptist Emergency Hospital purports to “[p]rovid[e] visibility to the pricing of medical care services we offer” and proclaims the importance of providing pricing information “so that people can make informed decisions,” Defendants do not disclose the unbundling scheme or the extremely high cost of having common, routine bloodwork performed at Baptist Emergency Hospital.

74. Plaintiff was ignorant of these material facts and did not have an equal opportunity to discover them.

75. Defendants failed to disclose the unbundling scheme accomplished through their use of custom, nonstandard panels for common lab tests and the extraordinarily high cost of common lab work at Baptist Emergency Hospital—omissions made by Defendants intending that Plaintiff and other Class members would act or refrain from acting based on the nondisclosure. Had the whole truth been disclosed, had there been full and honest “pricing transparency,” Plaintiff would have acted differently, and the omitted information is the sort that a reasonable person would consider important in making a decision about how to proceed.

76. As a proximate result of Defendants’ wrongful conduct, Plaintiff suffered injury.

COUNT IV – DTPA VIOLATIONS

77. Plaintiff realleges each of the allegations set forth in the foregoing paragraphs.

78. Plaintiff additionally brings this action pursuant to the DTPA on the grounds that Defendants engaged in “false, misleading, or deceptive” acts or practices in violation of the DTPA, including under § 17.46(b)(24) (“failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed”) and § 17.50(a)(3) (“an act or practice, which to a consumer’s detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree”).

79. Defendants withheld information known to them, that they knew would have been important to consumers, in order to induce consumers into a transaction. A reasonable consumer deciding where to seek treatment would clearly find the fact of an unbundling scheme that significantly increases the cost of common lab tests important, which is precisely why Baptist Emergency Health facilities, despite their purported commitment to “pricing transparency,” fail to

disclose this crucial information. Had the fact of an unbundling scheme and BEHSP's consequently extraordinarily high charges for routine lab work been disclosed, Keslar would have sought less costly treatment elsewhere.

80. Additionally, the business acts and practices of BEHSP and other Baptist Emergency Hospital facilities, which are operated by Defendant Emerus Holdings through subsidiaries including Defendant Emerus HP, take advantage of consumers to a grossly unfair degree, to consumers' detriment. No consumer has the knowledge or opportunity to discover the unbundling scheme at the time of the transaction, a reality that increases charges and payments to Defendants at the expense of patients.

81. Defendants' wrongful conduct was a producing cause of damages to Plaintiff and the putative Class members.

82. In the event that the false, misleading, or deceptive acts or practices were committed knowingly by the Defendants, Plaintiff is entitled to recover treble damages.

83. Plaintiff is entitled to recover reasonable and necessary attorneys' fees and court costs under the DTPA.

84. Prior to the filing of this First Amended Class Action Petition, Plaintiff sent written notice regarding the alleged violations of the DTPA, as contemplated under the statute's notice provision, § 17.505(a). The notice letters were sent on November 11, 2020, by certified mail, return receipt requested, to: Emerus / BHS SA Thousand Oaks, LLC d/b/a Baptist Emergency Hospital - Shavano Park, c/o Corporation Service Company d/b/a CSC-Lawyers Incorporating, 211 E. 7th Street, Ste. 620, Austin, TX, 78701; Emerus Hospital Partners, LLC, c/o H. David Kirby, 10077 Grogans Mill Rd., Ste. 100, The Woodlands, TX, 77380; Emerus Holdings, Inc., c/o Monica L. Porter, Chief Legal Officer, 8686 New Trails Dr., Ste. 100, The Woodlands, TX, 77381. The notice

letter to Emerus Hospital Partners, LLC, c/o H. David Kirby—its registered agent for service of process—was returned undeliverable.

DAMAGES

85. The Plaintiff, individually, seeks mandatory relief and non-monetary relief as described herein of \$100,000 or less at this time. However, the damages for the Class include non-monetary relief and monetary relief over \$1,000,000, as described elsewhere herein.

ATTORNEYS' FEES

86. Plaintiff and the Class are entitled to recover and sue for attorneys' fees under Tex. R. Civ. P. 42 and Tex. Bus. & Com. Code § 17.50(d).

CONDITIONS PRECEDENT

87. Except as otherwise stated herein, any and all conditions precedent for Plaintiff and the Class to recover have been performed or occurred.

REQUEST FOR DISCLOSURE

88. Pursuant to the Texas Rules of Civil Procedure 194, Plaintiff requests that Defendants provide the information required in a Request for Disclosure.

JURY DEMAND

89. Plaintiff and the Class demand a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, requests that the Court award the following relief:

- a. Certify this action as a class action, appoint Plaintiff as Class representative, and designate the undersigned as Class counsel;
- b. Award Plaintiff and the Class monetary damages, including treble damages if

appropriate;

c. Award Plaintiff and the Class equitable, declaratory, and/or injunctive relief;

d. Award Plaintiff and the Class restitution and/or disgorgement to the extent Defendants have been unjustly enriched;

e. Grant Plaintiff and the Class payment of the costs of prosecuting this action, including expert fees and expenses;

f. Grant Plaintiff and the Class payment of reasonable attorneys' fees;

g. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

HILDER & ASSOCIATES

/s/ Philip H. Hilder

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*Motions for Pro Hac Vice Admission
Pending*