

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

LIFEBRITE HOSPITAL GROUP OF STOKES,
LLC,

Case No.: 18-293

Plaintiff,

vs.

BLUE CROSS AND BLUE SHIELD OF NORTH
CAROLINA, an Independent Licensee of the
Blue Cross Blue Shield Association,

Defendant.

ANSWER AND COUNTERCLAIMS

For its Answer to the Complaint by LifeBrite Hospital Group of Stokes, LLC (“LifeBrite”) in the above-captioned matter, Defendant Blue Cross and Blue Shield of North Carolina (“Blue Cross NC”) states as follows. Unless specifically admitted herein, Blue Cross NC denies each and every allegation of the Complaint.

FACTUAL BACKGROUND

1. LifeBrite Hospital Group of Stokes, LLC (hereinafter “LifeBrite”) is a healthcare company organized and existing under the laws of the State of Georgia and is registered in North Carolina as a foreign company. LifeBrite’s principal place of business is located in Danbury, Stokes County, North Carolina.

ANSWER: Blue Cross NC is without sufficient information to admit or deny the allegations in Paragraph 1.

2. Blue Cross and Blue Shield of North Carolina (hereinafter “BCBSNC”) is a not-for-profit corporation organized and existing under the laws of the State of North Carolina with its principal place of business in Durham County, North Carolina, and with offices in Wake County, North Carolina.

ANSWER: Blue Cross NC admits that it is a hospital and medical services corporation formed and existing under the laws of the State of North Carolina with its principal place of business in Durham County, North Carolina. To the extent any further response is required, Blue Cross NC denies the remaining allegations in Paragraph 2.

3. This is an action concerning the refusal of BCBSNC to compensate LifeBrite for covered services rendered to BCBSNC and/or its affiliate’s insureds. This is also an action based on contract and breach of contract by BCBSNC, and for unjust enrichment by LifeBrite against BCBSNC.

ANSWER: Blue Cross NC admits that LifeBrite has made the allegations described in Paragraph 3. Blue Cross NC denies the veracity of those allegations, denies that LifeBrite is entitled to any relief, and further states that LifeBrite is liable to Blue Cross NC as described in Blue Cross NC’s Counterclaims.

4. This Court has jurisdiction over Defendant pursuant to N.C. Gen. Stat. 1-75.4 and other applicable law.

ANSWER: Blue Cross NC answers that Paragraph 4 contains legal conclusions to which no response is required. To the extent a response is required, Blue Cross NC denies the allegations in Paragraph 4.

5. Venue is proper in this Court pursuant to N.C. Gen. Stat. 1-79 and other applicable law.

ANSWER: Blue Cross NC answers that Paragraph 5 contains legal conclusions to which no response is required. To the extent a response is required, Blue Cross NC denies the allegations in Paragraph 5.

6. LifeBrite operates a critical access hospital known as LifeBrite Community Hospital of Stokes in Danbury, Stokes County, North Carolina (the "Hospital"). The Hospital offers a variety of customary hospital services, including inpatient, outpatient and outreach laboratory.

ANSWER: Blue Cross NC admits that LifeBrite operates the Hospital and the Hospital is a critical access hospital. Blue Cross NC is without sufficient information to admit or deny the remaining allegations in Paragraph 6, and therefore denies the same.

7. BCBSNC is the largest provider of private health insurance in North Carolina. It is a licensee of the Blue Cross Blue Shield Association (the "Association") which is a federation of thirty-six (36) independent health insurance organizations and

companies (the independent plans are referred to as “BCBS Affiliates”).

(<https://www.bcbs.com/about-us/blue-cross-blueshield-system>)

ANSWER: Blue Cross NC admits the allegations in Paragraph 7.

8. The Association operates the Blue Card program which allows policy holders of BCBS Affiliates to secure healthcare nationwide from other BCBS Affiliates, including but not limited to BCBSNC. See Exhibit A.

ANSWER: Blue Cross NC admits that the BlueCard program allows members in one state to secure healthcare in other states according to the terms of the BlueCard program. Blue Cross NC has no information regarding the accuracy or source of Exhibit A, and therefore denies any allegations regarding Exhibit A. Blue Cross NC denies any remaining allegations in Paragraph 8.

9. LifeBrite and BCBSNC are parties to that Network Participation Agreement which requires LifeBrite to provide services to members covered by plans issued or administered by BCBSNC, its affiliates or another BCBS Affiliate (a “Member”). In turn, BCBSNC is required to compensate LifeBrite for such services. A copy of the Network Participation Agreement, and its assignment to LifeBrite, is attached hereto as Exhibit B. (pricing information is redacted).

ANSWER: Blue Cross NC admits that it has an agreement with LifeBrite regarding the provision of healthcare services. Blue Cross NC states that the agreement speaks for itself. Further answering, Blue Cross NC states that Exhibit

B to the Complaint only contains odd-numbered pages of the agreement between Blue Cross NC and LifeBrite. Therefore, Blue Cross NC denies that Exhibit B is an accurate and complete copy of the referenced agreement. A true and accurate copy of the agreement is attached as Exhibit 1 to the Declaration of Roger Purnell in Support of Defendant's Notice of Removal, and is attached to Blue Cross NC's Counterclaims as Exhibit A.

10. The Network Provider Agreement adopts by specific reference and incorporates BCBSNC's policies and procedures. These policies and procedures are found in the "Blue Book," which is accessible at: http://bcbs.com/assets/providers/public/pdfs/BlueBook_July2016.pdf. Copies of the relevant excerpts are attached as Exhibit C. Section(s) 5.1 clearly states that all Blue Card claims, i.e. claims for members of a BCBS Affiliate holding a blue card, should be sent to BCBSNC and 5.1.1 clearly state that the Blue Card program applies to all claims except for the following: prescription drugs, stand-alone dental, stand-alone vision and Federal Employees Program. These provisions are material to the Network Provide Agreement.

ANSWER: Blue Cross NC states that the Network Provider Agreement and the Blue Book speak for themselves and no further response is required. To the extent any further response is required, Blue Cross NC denies the remaining allegations in Paragraph 10.

11. Starting with dates of service of November 14, 2017, in clear contravention and in breach of the Network Participation Agreement, BCBSNC unilaterally started denying several Blue Card claims stating that the claims should be sent to the State where the lab specimen was drawn. These denials are a breach of the Network Provider Agreement and has been continual since December 12, 2017. As of the date of filing of this Complaint, the Plaintiff has been damaged in excess of \$15,490,440.00.

ANSWER: Blue Cross NC denies the allegations in Paragraph 11.

12. By and through its agents, LifeBrite made several good faith efforts to resolve this matter with BCBSNC, including but not limited to telephone calls and written correspondence to Network Management as set forth and required in the Network Participation Agreement.

ANSWER: Blue Cross NC admits that representatives of LifeBrite and representatives of Blue Cross NC have discussed by phone and correspondence certain aspects of their relationship but Blue Cross NC denies that LifeBrite acted in good faith during those communications. To the extent any further response is required, Blue Cross NC denies the remaining allegations in Paragraph 12.

**FIRST CAUSE OF ACTION
BREACH OF CONTRACT**

13. LifeBrite realleges and incorporates all of the foregoing paragraphs set forth in the Complaint.

ANSWER: Blue Cross NC incorporates its answers to the foregoing paragraphs.

14. BCBSNC has materially breached the Network Participation Agreement by its refusal to process claims and reimburse LifeBrite for services rendered to its members.

ANSWER: Blue Cross NC denies the allegations in Paragraph 14.

15. LifeBrite is entitled to a judgment against the BCBSNC of the full amount due under the Network Participation Agreement because of BCBSNC's breach, plus interest at the rate of eight percent (8.0%) per annum, plus reasonable attorney fees.

ANSWER: Blue Cross NC denies the allegations in Paragraph 15.

**SECOND CAUSE OF ACTION
UNJUST ENRICHMENT**

16. LifeBrite realleges and incorporates all of the foregoing paragraphs set forth in the Complaint.

ANSWER: Blue Cross NC incorporates its answers to the foregoing paragraphs.

17. In the alternative, LifeBrite's provision of services to Members conferred a valuable benefit to BCBSNC. BCBSNC has received services from LifeBrite in excess of \$25,000.00, to which it should be required to compensate LifeBrite for the reasonable value of those services.

ANSWER: Blue Cross NC denies the allegations in Paragraph 17.

18. LifeBrite is entitled to a judgment in excess of \$25,000.00 from BCBSNC for the unjust enrichment of BCBSNC.

ANSWER: Blue Cross NC denies the allegations in Paragraph 18.

ADDITIONAL DEFENSES

Blue Cross NC asserts the additional defenses below on information and belief. Blue Cross NC has not knowingly or intentionally waived any defenses and reserves the right to assert any and all additional defenses that become available or apparent during discovery, and Blue Cross NC reserves the right to seek to amend its answer.

1. Plaintiff's claims are barred by its own breaches of contract.
2. Plaintiff's claims are barred by estoppel.
3. Plaintiff's complaint fails to state a claim on which relief may be granted.
4. Plaintiff's claims are barred by its own failure to perform the contract.
5. Plaintiff's claims are barred by Plaintiff's fraud.
6. Plaintiff's claims are barred by improper notice of breach and failure to exhaust remedies.

7. Plaintiff's claims are barred by the doctrine of justification.
8. Plaintiff's claims are barred by its prevention and frustration.
9. Plaintiff's claims are barred by public policy.
10. Plaintiff's claims are subject to set-off.
11. Plaintiff's claims are barred by the doctrine of unclean hands.
12. Plaintiff's claims are barred by the doctrine of unconscionability.
13. Plaintiff's claims are barred, in whole or in part, by any and all applicable statutes of limitation.
14. Plaintiff's claims are barred by the doctrines of waiver and laches.
15. Plaintiff's claims are barred because Plaintiff would be unjustly enriched if allowed to recover the sums alleged in the Complaint.
16. Plaintiff's claims are barred because Plaintiff failed to mitigate its damages.
17. Plaintiff's claims are barred because Plaintiff's damages, if any, were caused by Plaintiff's own acts and/or omissions.
18. Plaintiff's claims are barred by preemption.
19. Plaintiff's claims are barred by a failure to exhaust administrative remedies.
20. Plaintiff's claims are barred by failure to fulfill all conditions precedent to payment.

21. Plaintiff's claims are barred because the challenged decisions were based upon the proper exercise of discretion by claims administrators and such discretion was not arbitrary or capricious.

22. Plaintiff's claims are barred by the terms of the relevant policies and plans.

23. Plaintiff's claims are barred by the doctrines of accord, satisfaction, or settlement.

24. Plaintiff's claims are barred because Plaintiff does not have standing to bring those claims.

Blue Cross NC denies that LifeBrite is entitled to any of the relief it seeks in its Prayer for Relief. Blue Cross NC further prays as follows:

1. That the Court only grant a jury trial on matters so triable;
2. That LifeBrite take nothing on its Complaint;
3. That the Complaint be dismissed with prejudice and judgment entered in favor of Blue Cross NC on all causes of action in the Complaint;
4. For reasonable attorneys' fees to the extent permitted under applicable law;
5. For costs and expenses of suit incurred herein; and
6. For other and further relief as this Court deems just and proper.

COUNTERCLAIMS
(Jury Trial Demanded On All Matters for Triable)

For its counterclaims against LifeBrite Hospital Group of Stokes, LLC (“LifeBrite”), Blue Cross and Blue Shield of North Carolina (“Blue Cross NC”) states as follows:

1. Since at least August 2017, LifeBrite has engaged in a fraudulent scheme to enrich itself at Blue Cross NC’s expense by billing for laboratory services that were not payable, were fraudulent, were in violation of Blue Cross NC’s contracts with LifeBrite, and were otherwise unlawful.
2. LifeBrite operates a critical access hospital located in Danbury, North Carolina. According to the 2010 census, Danbury had a population of 189 residents.
3. In December 2016, a bankruptcy court approved the sale of LifeBrite’s predecessor entity, Pioneer Health Services of Stokes County, Inc. (“Pioneer”). LifeBrite purchased Pioneer and assumed all rights and obligations relating to the operation of the hospital beginning January 31, 2017.
4. At all times relevant to the underlying dispute, LifeBrite was an in-network provider of Blue Cross NC under several network participation agreements, including a Network Participation Agreement (the “Commercial Contract”) and a Medicare Provider Agreement (the “Medicare Contract”), both effective August 1, 2011 and assigned to LifeBrite effective January 31, 2017 (collectively, the Commercial Contract and Medicare Contract are referred to herein as the “Contracts”). True and

correct copies of the Commercial Contract and the Medicare Contract are attached as Exhibits A and B, respectively, and are incorporated herein.

5. On information and belief, LifeBrite billed Blue Cross NC for over \$76 million of lab testing that was not ordered by providers to be performed at or by LifeBrite.

6. On information and belief, LifeBrite used its status under the Contracts to bill for drug testing performed by other laboratories as if the testing had been performed at and by LifeBrite.

7. The testing billed by LifeBrite was not for patients being treated at LifeBrite, or by LifeBrite-credentialed healthcare providers, or for patients who resided in the relatively small territory serviced by LifeBrite. Instead, LifeBrite operated as a pass-through, through which LifeBrite submitted reimbursement claims for the testing of Blue Cross Blue Shield members located across the United States.

8. LifeBrite submitted, or caused to be submitted, claims to Blue Cross NC under LifeBrite's name, National Provider Identifier(s) ("NPI"), tax identifier(s), billing information, and – most importantly – pursuant to LifeBrite's favorable contracted reimbursement rates and participating status with Blue Cross NC.

9. The claims at issue include, but are not limited to, substantial numbers of urine drug testing claims.

10. To maximize profits, on information and belief LifeBrite leveraged other healthcare providers and laboratories, who provided their patients' urine specimens to LifeBrite. At this time, Blue Cross NC is without sufficient information to ascertain the

identities of those other providers and laboratories, referred to collectively hereinafter as the "Pass-Through Labs."

11. On information and belief, some of the Pass-Through Labs provided their patients' specimens on the condition that Blue Cross NC pay them for testing those specimens.

12. The vast majority of the patients were never present at LifeBrite, were never treated by LifeBrite-credentialed healthcare providers, and were located in areas not serviced by LifeBrite. Instead, their only connection to LifeBrite was that their urine testing was billed through LifeBrite in order to take advantage of LifeBrite's participating status and favorable reimbursement rate with Blue Cross NC.

13. Had the claims been billed directly by the Pass-Through Labs, most never would have been paid by Blue Cross NC, and those that were paid would have been paid at substantially lower rates.

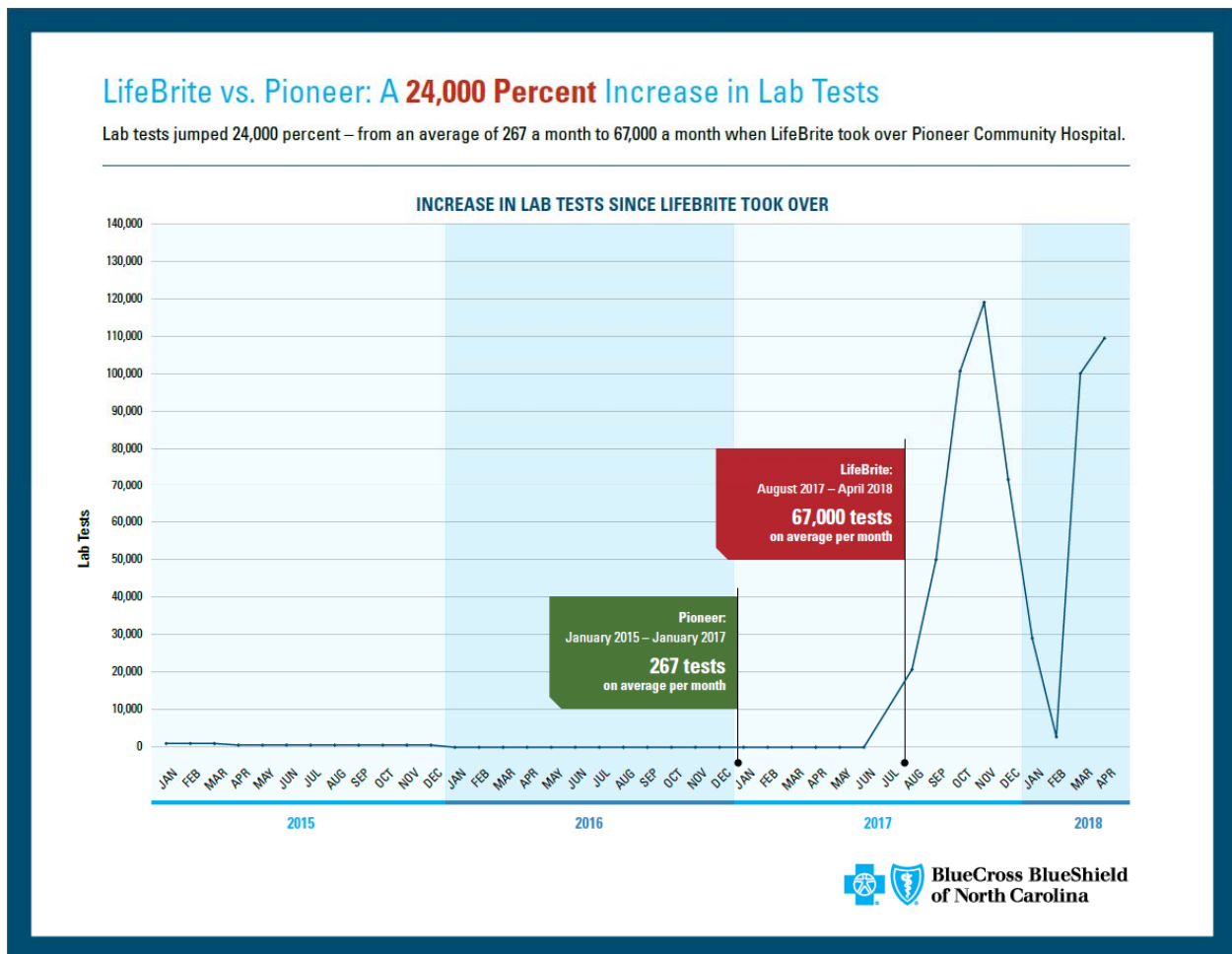
14. Upon information and belief, LifeBrite misrepresented some testing as being conducted at LifeBrite because it knew that Blue Cross NC was more likely to pay for the tests if performed at a participating hospital (as opposed to a non-participating Pass-Through Lab), and because LifeBrite's Contracts with Blue Cross NC reimbursed at substantially higher rates than the Pass-Through Labs would receive if they billed the claims directly.

15. Upon information and belief, in other instances, LifeBrite misrepresented tests it performed on specimens sent to LifeBrite from other providers as medically necessary tests ordered by LifeBrite providers for patients seen at LifeBrite.

16. Since August 2017, LifeBrite has overbilled Blue Cross NC by more than \$76 million for testing that it was not entitled to.

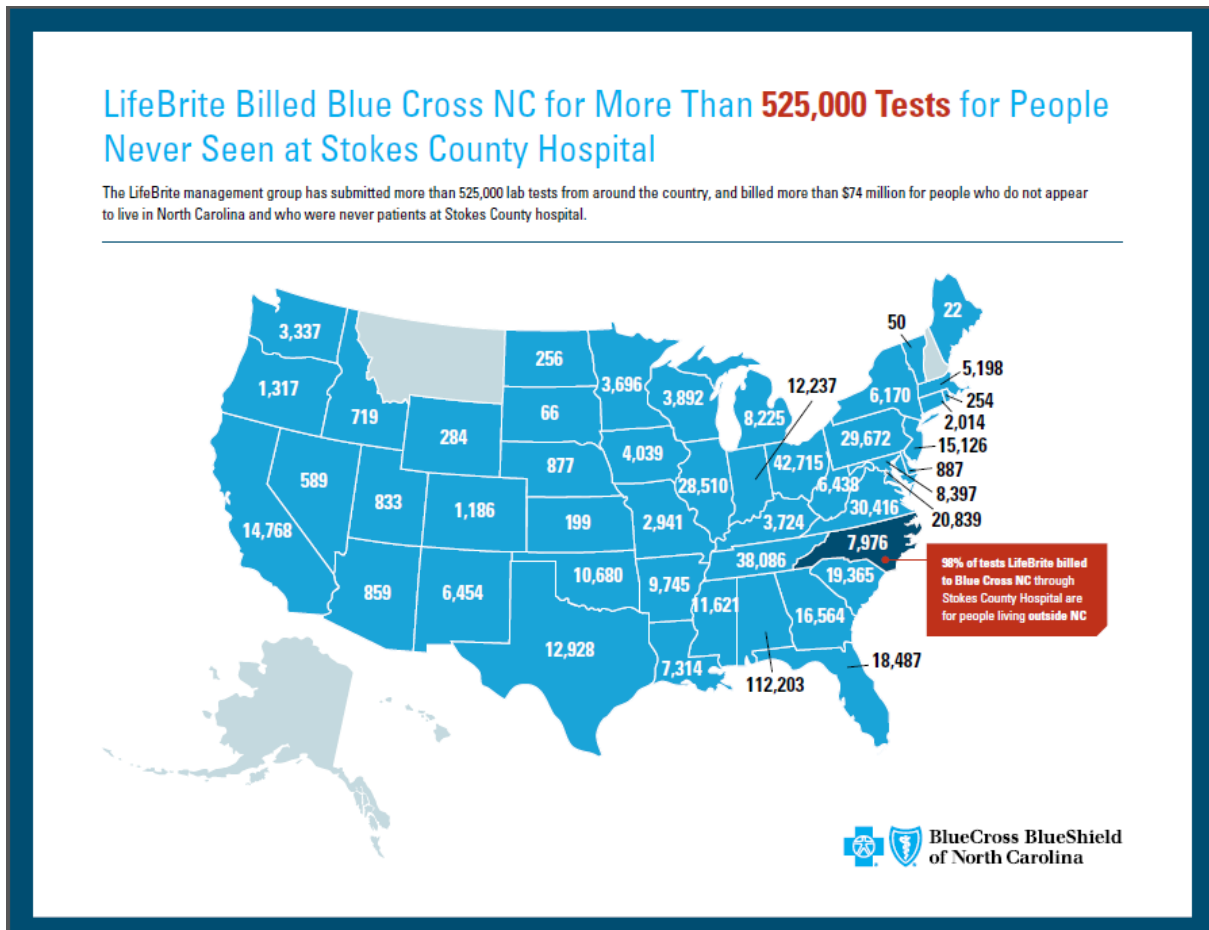
17. Before the scheme was in place, Pioneer billed Blue Cross NC approximately \$37,400 per month for lab tests from January 2015 to January 2017. By contrast, beginning in August 2017, LifeBrite has improperly billed Blue Cross NC for over \$76 million for lab testing, at an average rate of \$8.5 million per month. LifeBrite continues to bill Blue Cross NC for these fraudulent lab services.

18. The following graphs illustrate the remarkable increase in the volume of lab testing claims and the charges of those claims billed by LifeBrite:



19. LifeBrite’s scheme is ongoing. In April 2018 alone, LifeBrite submitted 133,995 lab claims and billed Blue Cross NC more than \$16 million. That is more than 72 times as many lab claims as the entire 2016 calendar year – and 63 times as much money.

20. Of the \$76 million that LifeBrite has billed to Blue Cross NC as part of this scheme, LifeBrite has billed Blue Cross NC more than \$74 million for approximately 525,000 lab tests for people who do not appear to live in North Carolina and who were never patients at the Stokes County hospital. As shown on the following graph, 98 percent of the tests LifeBrite billed to Blue Cross NC are for people living outside North Carolina:



21. Overall, from August 2017 to the present, LifeBrite's lab billing has jumped more than 22,000 percent – from an average of \$37,400 per month to approximately \$8.5 million per month. The reported number of lab tests purportedly performed at the hospital has jumped more than 24,000 percent – from an average of 267 tests per month to 67,000 tests per month.

22. This was done in spite of the fact that LifeBrite knew that the claims it submitted to Blue Cross NC were not payable, were fraudulent, were in violation of the Contracts, and were otherwise unlawful.

23. The purpose of LifeBrite's scheme was to increase the amount that it received from Blue Cross NC, without regard to the reasonableness or medical necessity of the underlying testing.

24. On information and belief, LifeBrite and the Pass-Through Labs failed to collect member payment responsibilities, in an effort to further conceal this scheme.

25. Through this civil action, Blue Cross NC seeks compensation for the injuries it has incurred because of LifeBrite's conduct. In addition, Blue Cross NC seeks punitive damages and injunctive relief prohibiting LifeBrite from further perpetrating its scheme.

JURISDICTION AND VENUE

26. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because this action presents a federal question and under 28 U.S.C. § 1442(a)(1) because Blue Cross NC has been sued for actions taken as a person acting under a federal officer of an agency of the United States under color of such office.

27. The Court has supplemental jurisdiction over these counterclaims pursuant to 28 U.S.C. § 1367 and Federal Rule of Civil Procedure 13, because the claims, including state law claims, are so related to the claims set forth in the Complaint and within the Court's jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution and because they arise out of the same transaction or occurrence in the Complaint.

28. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this District.

THE PARTIES

Counterclaim Plaintiff

29. Counterclaim Plaintiff Blue Cross Blue Shield of North Carolina is a hospital and medical services corporation formed and existing under the laws of the state of North Carolina with its principal place of business in Durham County, North Carolina.

Counterclaim Defendant

30. Counterclaim defendant LifeBrite Hospital Group of Stokes, LLC, is a limited liability company organized and existing under Georgia law and with its principal place of business in Danbury, North Carolina. On information and belief, the members of LifeBrite are residents of Florida or Georgia.

THE BLUECARD PROGRAM

31. Blue Cross NC is an independent licensee of the Blue Cross and Blue Shield Association (“**BCBS Association**”).

32. Blue Cross NC is a participant in the BCBS Association’s BlueCard program, which allows members of one BCBS Association licensee’s health plans to obtain healthcare services in another BCBS Association licensee’s service area (e.g., where a member is traveling or living outside of their home plan’s service area).

33. For medical claims generally, when a provider is a participating provider with Blue Cross NC, and is located in Blue Cross NC’s service area, services performed and billed by that provider for any BCBS Association licensee’s members are billed to Blue Cross NC.

34. Blue Cross NC would then reconcile the cost of those services with the BCBS Association licensee responsible for each member.

35. Pursuant to Section 5.8.7 of the Blue Cross NC Provider Blue Book, however, Blue Cross NC required laboratory claims to be submitted to the BCBS Association licensee where the specimen was collected.

MANAGED CARE AND BLUE CROSS NC

36. Blue Cross NC is an insurer and third-party claims administrator for group health plans that provide benefits to their covered individuals and dependents.

37. Blue Cross NC may insure group health plans directly (the “**Fully-Insured Plans**”). For these plans, Blue Cross NC resolves claims and makes benefit payments from its own assets.

38. Blue Cross NC also provides administrative services to self-funded group health plans (the “**Self-Funded Plans**”). Blue Cross NC delivers these services pursuant to Administrative Services Agreements between Blue Cross NC and the health plan’s sponsor (usually an employer), which identify the rights and obligations of each party. Many of the health plans sponsored by private employers are governed by ERISA, 29 U.S.C. § 100 *et seq.* Blue Cross NC provides insurance and/or administrative services to these employer-sponsored health plans, including the processing of claims for reimbursement of medical services provided to the individuals covered by these benefit plans.

39. Blue Cross NC paid claims to LifeBrite on behalf of a number of self-funded plans, and seeks redress in this lawsuit for those Self-Funded Plans.

40. Each of the Self-Funded Plans delegated to Blue Cross NC the discretionary authority to determine claims for benefits.

41. In this capacity, Blue Cross NC has processed claims and administered appeals on behalf of the Self-Funded Plans.

42. Similarly, all (or nearly all) of the impacted Self-Funded Plans have given Blue Cross NC the authority and discretion to recover overpayments.

43. Accordingly, Blue Cross NC has authority to seek recovery on behalf of the impacted Self-Funded Plans and for payments made by the Fully-Insured Plans.

44. Blue Cross NC administers the Service Benefit Plan, an insurance plan for federal employees sponsored by the United States Office of Personnel Management and sometimes known as the “Federal Employee Program.” Similarly, Blue Cross NC is

authorized to administer Medicare Advantage plans by the Centers for Medicare and Medicaid Services. Blue Cross NC has the authority to seek recovery for benefits paid under these managed care plans, as well as any impacted insured individual plans.

BLUE CROSS NC'S NETWORK OF PARTICIPATING PROVIDERS

45. The enrollees of Blue Cross NC are considered Blue Cross NC's "members."

46. Blue Cross NC relies upon networks of participating (also known as "in-network") healthcare providers. Participating providers contract with Blue Cross NC to accept a negotiated rate for their services, in exchange for, among other things, increased access to members of Blue Cross NC (due to the savings available to the members who receive treatment from participating providers) and increased certainty with respect to the amount that they will receive from Blue Cross NC for their services.

47. On the other hand, non-participating (also known as "out-of-network") providers have not contracted with Blue Cross NC. The reimbursement rates that Blue Cross NC is required to pay non-participating providers may be less than the rates Blue Cross NC is contractually obligated to pay participating providers, and members are typically personally responsible for a larger share of the cost of those services.

48. LifeBrite is one of Blue Cross NC's participating providers.

49. On information and belief, none of the Pass-Through Labs was a participating provider with Blue Cross NC.

THE BLUE CROSS NC/LIFEBRITE CONTRACTS

50. Effective August 1, 2011, Blue Cross NC and LifeBrite's predecessor, Pioneer, entered into the Commercial Contract and the Medicare Contract. The Contracts were assigned to LifeBrite effective January 31, 2017. Redacted, but otherwise true, correct, and complete copies of the Commercial Contract and the Medicare Contract are attached hereto as Exhibits A and B, respectively.

51. The effective terms of the Contracts were one year, but they automatically renewed every year with the same terms and conditions unless terminated through the process set forth in the Contracts.

52. The Contracts contain a number of provisions making clear that Blue Cross NC contracted to reimburse LifeBrite only for services provided at and by LifeBrite.

53. For example, LifeBrite agreed to "*render* Medically Necessary Covered Services to Members . . . according to the terms of this Agreement." (Ex. A at § 2.1.1 (emphasis added).) In addition, LifeBrite agreed to "*provide* Covered Services to Members so as to provide health or medical care in conformity with accepted and prevailing practices applicable to professional practitioners." (Ex. A at § 2.1.2.1 (emphasis added).) LifeBrite also agreed to "*accept and treat* BCBSNC Members and to *provide* Medically Necessary Covered Services . . . in accordance with the terms of the Agreement." (Ex. B at § 2.1 (emphasis added).)

54. The Commercial Contract specifically provides that LifeBrite was only entitled to payment for "Covered Services provided to Members . . . at the sites listed in

the Site of Service Exhibit[.]” (Ex. A at § 4.1.) In addition, the Commercial Contract specifically provides that all individual practitioners subject to the Contract were listed on the Practitioner Roster Exhibit attached to the Agreement. (Ex. A at 2.2.6.)

55. Similarly, the Medicare Contract specified a list of providers and service locations. (Ex. B at §§ 2.1, 3.1.1.)

56. Other relevant provisions of the Contracts include:

- a. LifeBrite agreed “not to bill, charge, seek compensation, remuneration or reimbursement from any Member, us, or any third party for health care services and/or supplies provided to Members which are determined by us not to be Medically Necessary, or are not payable due to your failure to follow our applicable Policies and Procedures[.]” (Ex. A at § 4.5.5.)
- b. Medically Necessary services are:
 - i. provided for the diagnosis, treatment, cure, or relief of a health condition, illness, injury, or disease, and not for experimental, investigational, or cosmetic purposes;
 - ii. necessary for and appropriate to the diagnosis, treatment, cure, or relief of a health condition, illness, injury, disease, or its symptoms;
 - iii. within generally accepted standards of medical care in the community; and

- iv. not solely for the convenience of the insured, the insured's family, or the provider. (Ex. A at § 1.6.)
- c. LifeBrite agreed "not to commit fraud or abuse" and to comply with all applicable laws, regulations, and industry standards. (Ex. A at § 2.3.2.)
- d. LifeBrite agreed to comply with all of Blue Cross NC's programs, policies, and procedures. (Ex. A at § 2.3.1; Ex. B at § 2.1.)
- e. LifeBrite agreed to "collect from Members applicable Deductibles, Coinsurance, and Copayments[.]" (Ex. A at § 4.4; *see also* Ex. B at § 2.2.)
- f. LifeBrite agreed not to assign, delegate, or transfer any part of its obligations under the Contract without Blue Cross NC's prior written consent. (Ex. A at § 6.4.1; Ex. B at § 6.4.)
- g. LifeBrite agreed not to disclose the terms and conditions of the Contracts, any copies of the Contracts, and Blue Cross NC's trade secret information. (Ex. A at § 6.9.1; *see also* Ex. B at § 6.12.)

57. The Contracts also set the maximum amount that LifeBrite could receive from Blue Cross NC for the provision of Hospital Services.

58. Specifically, the Contracts set the payment amount as the lesser of LifeBrite's usual charge or the amount specified in the Reimbursement Exhibit attached to the Contracts. (Ex. A at § 4.1; Ex. B at § 4.3.)

URINE DRUG TESTING AND PASS-THROUGH BILLING SCHEMES

Urine Drug Testing

59. Drug tests are laboratory analyses used to aid in the detection of prescription, recreational, or illicit substances in human specimens. Drug testing may be used to meet state requirements, evaluate therapeutic compliance and drug aberrant behavior (*e.g.*, abuse or diversion), or to evaluate for child and elder abuse. Drug tests can include analysis for most drugs, chemicals, and/or plant products that are known to be misused, including for recreational use.

60. Although drug tests may be performed on a variety of specimen types, urine testing is the most commonly used because it is widely available, minimally invasive, and generally the least expensive for drug detection and monitoring.

61. Urine testing typically falls into two categories of testing: presumptive and definitive.

62. Presumptive testing is used, when medically necessary, to determine the presence or absence of one or more drugs or drug classes. Presumptive testing is typically performed via immunoassay, and results are expressed as negative, positive, or numeric. Presumptive testing is also referred to as “screening” or “qualitative” testing.

63. Definitive testing is a follow-up test performed on a separate portion of the original specimen, when medically necessary, to validate the identity and quantity of a specific drug or metabolite. Definitive testing is typically performed using either gas chromatography-mass spectrometry or liquid chromatography-mass spectrometry,

and results are expressed as a concentration of a particular metabolite or analyte (e.g., nanograms per milliliter (ng/mL)). Definitive testing is also referred to as “confirmation” or “quantitative” testing.

64. Definitive testing is typically reasonable and necessary only in certain limited circumstances, such as when a presumptive test is negative for a prescribed medication or positive for a drug that was not prescribed or is illegal.

65. Drug testing is covered by Blue Cross NC when it meets (1) all the terms and conditions of the member’s benefit plan; (2) when it meets all the requirements of Blue Cross NC’s Corporate Medical and other applicable policies; and (3) when it meets all the terms and conditions of the rendering provider’s contract.

The Toxicology Laboratory Industry

66. In recent years, government enforcement efforts, private lawsuits, and investigative journalism have helped to identify widespread fraud within the toxicology laboratory industry.

67. For example, in a November 2014 article about the massive increases in the amount of urine testing being reimbursed by Medicare, the Wall Street Journal summarized the then-recent history of the industry:

Spending on the [urine drug] tests took off after Medicare cracked down on what appeared to be abusive billing for simple urine tests. Some doctors moved on to high-tech testing methods, for which billing wasn’t limited.

They started testing for a host of different drugs—including illegal ones that few seniors ever use—and billing the federal health program for the elderly and disabled separately for each substance.

Medicare's spending on 22 high-tech tests for drugs of abuse hit \$445 million in 2012, up 1,423% in five years.¹

68. In another example, in October 2015, the former Millennium Laboratories agreed to pay \$256 million to the U.S. Department of Justice to resolve allegations that it billed Medicare "many millions of dollars' worth" of urine testing claims that were "not reasonable and necessary or that were furnished pursuant to prohibited referrals" in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b), and other statutes.

69. As a result of concerns about the frequency, cost, and manner with which toxicology laboratories were billing government and commercial payors, a number of changes were put into place as to how laboratories test and bill for urine testing.

70. For example, the Centers for Medicare and Medicaid Services ("CMS") changed the way that urine testing is billed, in part because of a "concern about the potential for overpayment when billing for each individual drug test rather than a single code that pays the same amount regardless of the number of drugs that are being tested."

71. Because these changes have decreased both the frequency and rate at which toxicology laboratories are reimbursed for urine testing, toxicology laboratories looked for other ways to gain access to more favorable reimbursement rates, including – as here – passing their urine testing claims through hospitals to take

¹ Christopher Weaver and Anna Wilde Mathews, *Doctors Cash In on Drug Tests for Seniors, and Medicare Pays the Bill*, THE WALL STREET JOURNAL, Nov. 10, 2014 (available at: <https://www.wsj.com/articles/doctors-cash-in-on-drug-tests-for-seniors-and-medicare-pays-the-bill-1415676782>).

advantage of the hospitals' participating status and favorable reimbursement rates from payors.

72. Indeed, the website of one entity that recruited toxicology laboratories to pass their urine testing claims through a network of pass-through hospitals makes clear the motives of the arrangement:

Why Hospital Out-Patient Diagnostic Billing?

The Government is continuing to restrict independent clinical labs due to recurring compliance and quality issues. Payers are strategically making moves to block all but a chosen few clinical labs by restricting in-network access. This forces out-of-network labs to strategically align themselves with health systems in order to have a seat at the table. Additionally, patients, clinics, rehab groups, and MDs prefer working with higher quality lab system than their current choices dictate: That's where you come in...

Benefits of being a Preferred Partner



- 90% adjudication rate
- 50% of claims within 30 days
- Get paid a minimum of \$500/specimen



- Work with the top health systems in the country
- Above average reimbursement



- Free state-of-the-art specimen tracking system
- In-Network status for 90+% of claims

73. In other words, because of “recurring compliance and quality issues,” CMS and commercial payors restricted certain toxicology laboratories from their networks. This led the remaining laboratories – including those who were restricted from payors’ networks for compliance and quality issues – to rely on health systems like LifeBrite to hide the true identity of the laboratory ordering or performing the urine

testing, and take advantage of the hospitals' participating status and favorable reimbursement agreements with payors.

74. Numerous pass-through schemes have been uncovered recently. For example, the Office of the Missouri State Auditor investigated "a billing scheme" where "the vast majority of billings were for patients who had never been to or received services" from the local rural hospital.² On information and belief, one of the laboratories involved in that case was one LifeBrite Laboratories, LLC, a Georgia limited liability company.

75. Other similar pass-through schemes have been perpetrated, without limitation, in Florida and Oklahoma. *See Campbellton-Graceville Hosp. Corp. v. Peoples Choice Hosp.*, No. 5:16-cv-00222 (N.D. Fla. filed Aug. 3, 2016); *Aetna Inc. v. The People's Choice Hosp., LLC*, No. 2:17-cv-04354 (E.D. Pa. filed Sept. 29, 2017) (recently transferred to the Western District of Texas).

THE PASS-THROUGH SCHEME

76. As described herein, LifeBrite took advantage of its status as an in-network provider for Blue Cross NC to fraudulently camouflage claims for testing from the Pass-Through Labs so that LifeBrite could bill Blue Cross NC for an artificially – and astronomically – high volume of tests and so that Blue Cross NC would be more likely

² The State Auditor's report, which is incorporated herein, is accessible via the following link: <https://www.auditor.mo.gov/content/auditor-galloway-uncovers-evidence-90-million-billing-scheme-putnam-county-memorial-hospital> (last visited Feb. 22, 2018). The State Auditor's press release announcing its findings is available via the following link: <https://auditor.mo.gov/content/auditor-galloway-uncovers-evidence-90-million-billing-scheme-putnam-county-memorial-hospital> (last visited Feb. 22, 2018).

to pay the claims, and would pay them at higher rates, than if the claims were billed by the Pass-Through Labs directly.

77. More specifically, the tests billed by LifeBrite to Blue Cross NC were not ordered by providers to be performed at or by LifeBrite. The Pass-Through labs referred the tests to LifeBrite to take advantage of LifeBrite's reimbursement rate.

78. On information and belief, in some instances LifeBrite never actually performed the testing for which it billed. Even if LifeBrite did perform some testing, there was no clinical value to having LifeBrite perform the test beyond what could have been provided had the Pass-Through Lab performed the test as ordered by the provider.

79. Under either scenario, LifeBrite should not have billed the tests to Blue Cross NC.

80. Upon information and belief, LifeBrite then split the proceeds of this scheme with the Pass-Through Labs.

81. Upon information and believe, LifeBrite relied on networks of referring healthcare providers who ordered large volumes of laboratory testing, including pain clinics and drug detoxification or rehabilitation facilities.

82. Upon information and belief, to ensure that these healthcare providers and laboratories participated in LifeBrite's scheme, LifeBrite paid kickbacks by, for example, promising the referring providers a portion of the reimbursement that LifeBrite received for each test.

83. Upon information and belief, once a test was ordered by a referring provider from a Pass-Through Lab, the specimen was sent to LifeBrite or an affiliate of LifeBrite. LifeBrite or its affiliate then performed the testing and submitted the claim to Blue Cross NC as if the testing had been performed by LifeBrite for a member seen at LifeBrite. Upon information and belief, LifeBrite may have also billed for some tests it did not perform as if it had performed them.

84. LifeBrite's scheme involved tests from across the country. The breadth and brazenness of LifeBrite's scheme is highlighted by the fact that LifeBrite submitted thousands of lab testing claims *per month*, including 133,995 claims in April 2018 alone — for a hospital in a community with 189 residents.

85. As a result of this scheme, LifeBrite billed Blue Cross NC for at least \$76 million in lab testing that was fraudulent and not payable under the Contracts.

86. Blue Cross NC reasonably relied on LifeBrite's representations when it paid LifeBrite's claims.

87. Upon information and belief, to maximize the revenue that they could extract from Blue Cross NC, LifeBrite billed the testing using codes that would maximize the amount likely to be paid, without regard to whether those codes reflected services that were actually appropriate or medically necessary, and without regard to appropriate billing practices.

88. When using the codes in effect at all relevant times, a laboratory should have billed one presumptive code or one definitive code per date of service.

89. Instead, LifeBrite often improperly unbundled and billed Blue Cross NC for 15 or more drug testing codes *in addition to* the codes for all presumptive and definitive testing per date of service.

90. To conceal its scheme, LifeBrite consciously ignored its obligation to collect member payment obligations. This was a significant failure because member payment obligations are an important check on fraud and abuse in the healthcare industry. For example, if a member in California receives a copayment bill from a hospital in North Carolina that the member has never been to, the member will likely dispute the bill, alerting Blue Cross NC to a problem. Similarly, a member would likely dispute a copayment or other bill for an unbundled series of unnecessary tests. LifeBrite's intentional failure to collect member payment obligations allowed LifeBrite to extract more money from Blue Cross NC by concealing its scheme.

91. After noticing the stunning increase in claims and payments in a few short months, Blue Cross NC placed LifeBrite on prepayment review in November 2017. As a result of the prepayment review, Blue Cross NC stopped payment for codes associated with LifeBrite's improper billing and required LifeBrite to submit medical record documentation for those codes before Blue Cross NC would make any payments for those services. The Contracts permit Blue Cross NC to engage in prepayment review.

CAUSES OF ACTION

COUNT I FRAUDULENT MISREPRESENTATION

92. Blue Cross NC realleges and incorporates each preceding paragraph of the Counterclaim as if fully set forth herein.

93. LifeBrite made numerous misrepresentations of material facts and failed to disclose other material facts to Blue Cross NC each time LifeBrite submitted a pass-through lab testing claim for payment to Blue Cross NC. Those misrepresentations and omissions include but are not limited to the following:

- a. That the tests were ordered from LifeBrite when they actually were not;
- b. That the testing was medically necessary;
- c. That the testing was provided for a member seen at one of LifeBrite's sites of service;
- d. That the testing was performed by LifeBrite on an outpatient basis;
- e. That the testing was ordered by a provider listed on LifeBrite's provider roster;
- f. That the claims were properly coded in accordance with professional coding standards, industry standards, and Blue Cross NC policies and procedures;
- g. That the claims were not fraudulent or abusive;
- h. That the claims were supported by the patient's medical records;

- i. That LifeBrite properly collected member obligations;
- j. The provider name, provider address, Tax ID, NPI, type of bill, and coding; and
- k. That the claims were accurate.

94. LifeBrite engaged in the above misrepresentations willfully and with the intent to defraud Blue Cross NC, and with willful and reckless disregard of Blue Cross NC's rights and interests.

95. Blue Cross NC reasonably and justifiably relied on LifeBrite's misrepresentations.

96. LifeBrite's misrepresentations did, in fact, deceive Blue Cross NC.

97. As a direct and proximate result of LifeBrite's misrepresentations, Blue Cross NC sustained millions of dollars in damages.

98. LifeBrite's fraudulent conduct was outrageous and aggravated such that punitive damages are appropriate.

99. Blue Cross NC is entitled to recover compensatory and punitive damages from LifeBrite.

COUNT II NEGLIGENT MISREPRESENTATION

100. Blue Cross NC realleges and incorporates each preceding paragraph of the Counterclaim as if fully set forth herein.

101. Due to the relationship between the parties, LifeBrite owed Blue Cross NC a duty of care in communication of information.

102. LifeBrite made various misrepresentations of material facts and failed to disclose material facts to Blue Cross NC, as alleged in Paragraph 93.

103. In making such misrepresentations, LifeBrite failed to exercise reasonable care and competence in obtaining and communicating information to Blue Cross NC.

104. LifeBrite made its material misrepresentations in willful and wanton disregard of Blue Cross NC's rights and interests.

105. Blue Cross NC reasonably and justifiably relied upon such negligent misrepresentations.

106. As a direct and proximate result of LifeBrite's negligent misrepresentations, Blue Cross NC sustained millions of dollars in damages.

107. LifeBrite's conduct was outrageous and aggravated such that punitive damages are appropriate.

108. Blue Cross NC is entitled to recover compensatory and punitive damages from LifeBrite.

**COUNT III
BREACH OF CONTRACT**

109. Blue Cross NC realleges and incorporates each preceding paragraph of the Counterclaim as if fully set forth herein.

110. LifeBrite was a party to the Contracts with Blue Cross NC. The Contracts are enforceable agreements with respect to the time periods at issue, and Exhibits A and B are incorporated herein.

111. For the reasons stated above, LifeBrite breached the Contracts, including but not limited to the provisions set forth in Paragraphs 53 to 56, inclusive.

112. At the time Blue Cross NC made payments on claims submitted by LifeBrite, Blue Cross NC reasonably believed that the claims were submitted in accordance with LifeBrite's contractual, legal, professional, and ethical obligations. In fact, they were not.

113. LifeBrite is also obligated to return any overpayments made by Blue Cross NC. (*See* Ex. A § 4.7.) LifeBrite has failed to return overpayments.

114. The Contracts contained an implied covenant of good faith and fair dealing.

115. LifeBrite's wrongful conduct, as alleged herein, constitutes a breach of the implied covenant of good faith and fair dealing.

116. As a direct and proximate result of LifeBrite's breaches of the Contracts, Blue Cross NC has incurred millions of dollars in damages, including but not limited to financial loss.

117. Blue Cross NC is entitled to recover compensatory damages from LifeBrite, together with interest.

**COUNT IV
BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT**

118. Blue Cross NC realleges and incorporates each preceding paragraph of the Counterclaim as if fully set forth herein.

119. LifeBrite breached the Contracts as more fully described in Count III.

120. Those breaches were aggravated by LifeBrite's fraudulent conduct, more fully described in Count I.

121. Blue Cross NC suffered damages as a result of LifeBrite's fraudulent conduct.

122. LifeBrite's fraudulent conduct was outrageous and/or aggravated such that punitive damages are appropriate.

123. As a direct and proximate result of LifeBrite's breaches of contract and fraudulent acts, Blue Cross NC has suffered millions of dollars in actual, plus interest, and is further entitled to punitive damages.

**COUNT V
TORTIOUS INTERFERENCE WITH CONTRACT**

124. Blue Cross NC realleges and incorporates each preceding paragraph of the Counterclaim as if fully set forth herein.

125. Blue Cross NC had a contract with each of its members.

126. Those contracts required each member to pay a coinsurance, copayment, or deductible payment.

127. LifeBrite knew about the members' contractual obligations to make those payments and was required by contract to collect the members' contractual obligations. (See Ex. A § 4.4; Ex. B at Attach. B.)

128. LifeBrite intentionally, wrongfully, and deliberately failed to collect members' payment obligations, thereby inducing the members to breach their contracts with Blue Cross NC.

129. LifeBrite's wrongful conduct, as alleged herein, constitutes tortious interference with those contracts.

130. LifeBrite's conduct was outrageous and aggravated, such that punitive damages are appropriate.

131. As a direct and proximate result of LifeBrite's tortious interference, Blue Cross NC has suffered millions of dollars in actual damages, plus interest, and is further entitled to punitive damages.

COUNT VI
UNFAIR OR DECEPTIVE TRADE PRACTICES, N.C. GEN. STAT. § 75-1.1, ET SEQ.

132. Blue Cross NC realleges and incorporates each preceding paragraph of the Counterclaim as if fully set forth herein.

133. LifeBrite's actions and conduct, as alleged herein, constitute unfair or deceptive acts, practices, and methods of competition, in or affecting commerce, in violation of N.C. GEN. STAT. § 75-1.1. The conduct of LifeBrite was unfair, deceptive, unethical, and in violation of ethical standards of dealings between persons engaged in business and the public policy of the State of North Carolina.

134. LifeBrite fraudulently submitted claims for payment, as more fully described in Count I.

135. Blue Cross NC made substantial payments to LifeBrite for the claims that were fraudulently submitted.

136. LifeBrite's fraudulent and unlawful actions were "in or affecting commerce" within the meaning of N.C. GEN. STAT. § 75-1.1.

137. As a direct and proximate result of LifeBrite's unfair and deceptive trade practices, Blue Cross NC suffered millions of dollars in actual damages, plus interest thereon. Blue Cross NC is entitled to have and recover such actual damages, trebled pursuant to N.C. GEN. STAT. § 75-16, and attorneys' fees and costs pursuant to N.C. GEN. STAT. § 75-16.1.

COUNT VII
RESTITUTION UNDER ERISA § 502(a)(3)

138. Blue Cross NC realleges and incorporates each preceding paragraph of the Counterclaim as if fully set forth herein.

139. Many of the impacted group health plans are employer-sponsored group health plans covered by ERISA (the "**ERISA Plans**").

140. Blue Cross NC has been delegated by the plan administrator of each of the ERISA Plans the discretionary authority to review and decide on claims for benefits under the ERISA Plans.

141. The ERISA Plans also delegated to Blue Cross NC the authority to recover overpayments made by Blue Cross NC on the ERISA Plans' behalf.

142. Because of the fraudulent scheme identified herein, Blue Cross NC has paid millions of dollars in benefits to LifeBrite.

143. Blue Cross NC has standing to sue under ERISA § 502(a)(3) to obtain appropriate equitable relief to redress violations of the ERISA Plans and to enforce the terms of the ERISA Plans.

144. As alleged herein, LifeBrite has submitted, or caused to be submitted, misleading and fraudulent claims to Blue Cross NC for payment of benefits for charges related to laboratory services.

145. Blue Cross NC relied on the claim information supplied by LifeBrite, or that LifeBrite caused to be supplied, in determining whether to pay the claims.

146. Had Blue Cross NC been aware that the claims misrepresented the services in order to make them appear payable, when in fact they were not, it would not have made those payments.

147. Based upon the fraudulent claims LifeBrite submitted, or caused to be submitted, to Blue Cross NC, LifeBrite received payments in excess of the amounts that it was actually entitled to receive for those services.

148. Further, even if LifeBrite did not knowingly and intentionally submit misleading and fraudulent claims to Blue Cross NC, Blue Cross NC is entitled to equitable relief to enforce the terms of the ERISA Plans, and recover overpayments made to LifeBrite.

149. Further, by knowingly accepting payments from the ERISA Plans, LifeBrite became bound by the ERISA Plans' terms and conditions, including conditions related to overpayments.

150. The ERISA Plans, by their terms, require the return of overpayments and amounts that were erroneously paid.

151. Thus, even to the extent that LifeBrite did not intentionally overcharge Blue Cross NC, Blue Cross NC is entitled to equitable relief to enforce the terms of the ERISA Plans and recover these overpayments.

152. Because of LifeBrite's wrongful behavior, Blue Cross NC has paid millions of dollars in benefits to LifeBrite, that were not owed under the terms of the ERISA Plans.

153. Blue Cross NC seeks equitable restitution to cover the assets that LifeBrite unlawfully obtained because of the conduct described herein.

154. Specifically, Blue Cross NC seeks an Order imposing a constructive trust on the assets that LifeBrite received in the form of overpayments, as well as on any profits or income made by LifeBrite on those amounts.

155. Blue Cross NC also seeks an Order restoring to it – individually and on behalf of the ERISA Plans – the sums held in constructive trust by LifeBrite.

**COUNT VIII
DECLARATORY AND INJUNCTIVE RELIEF
UNDER ERISA § 502(a)(3) AND 28 U.S.C. §§ 2201 AND 2202**

156. Blue Cross NC realleges and incorporates each preceding paragraph of the Counterclaim as if fully set forth herein.

157. Blue Cross NC acts as a claims fiduciary for the ERISA Plans.

158. Therefore, Blue Cross NC has standing under ERISA § 502(a)(3) to enjoin any acts or practices that violate any provisions of the ERISA Plans, and to obtain other appropriate relief to redress such violations or enforce plan provisions.

159. LifeBrite has engaged in a scheme to defraud Blue Cross NC into paying amounts to LifeBrite in excess of amounts owed under the relevant ERISA Plans, and for services that are not covered under the relevant ERISA Plans' terms, as described herein.

160. There is an actual case and controversy between Blue Cross NC and LifeBrite as to the claims LifeBrite submitted, and continues to submit, to Blue Cross NC, all of which arise from the fraudulent scheme described herein.

161. LifeBrite's fraudulent scheme is deceptive, unfair, and unlawful.

162. No payment is due to LifeBrite on any claims that are pending, or may be submitted in the future, where such claims arise from LifeBrite's fraudulent scheme.

163. There is a *bona fide*, present, and practical need for a declaration as to the lawfulness of LifeBrite's actions, including whether Blue Cross NC has the right to deny the claims implicated by LifeBrite's actions and scheme.

164. Blue Cross NC is entitled to a judgment declaring that LifeBrite's actions and business practices are unlawful, and that any claims for payment of benefits submitted by LifeBrite to Blue Cross NC because of this scheme are non-payable and void.

165. Blue Cross NC also seeks recovery of its reasonable and necessary attorney's fees and costs, pursuant to ERISA § 502(g)(1).

166. Under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, Blue Cross NC is entitled to a judgment declaring that LifeBrite's actions and business practices are unlawful, even as to the non-ERISA plans impacted by this fraudulent

scheme, and that any claims for payment of benefits submitted by LifeBrite as a result of its fraudulent scheme are non-payable and void.

**COUNT IX
CONSTRUCTIVE TRUST AND EQUITABLE LIENS**

167. Blue Cross NC realleges and incorporates each preceding paragraph of the Counterclaim as if fully set forth herein.

168. As a result of LifeBrite's actions alleged herein, LifeBrite received ill-gotten profits, gains, and amounts from Blue Cross NC. On information and belief, some of these amounts have been used to purchase various assets and real property.

169. Blue Cross NC is entitled to trace the proceeds of the scheme and this conduct through whatever real and personal property and other accounts the proceeds may have flowed, and Blue Cross NC is further entitled to a constructive trust or an equitable lien on that profit in whatever form it may now exist.

170. LifeBrite should be required to disgorge all ill-gotten gains.

171. The Court should impose an equitable lien or constructive trust for the benefit of Blue Cross NC upon any real or personal property or good or other accounts held by LifeBrite that derived entirely or partially from any of the ill-gotten profits of LifeBrite's misconduct.

**COUNT X
UNJUST ENRICHMENT**

172. Blue Cross NC realleges and incorporates each preceding paragraph of the Counterclaim as if fully set forth herein.

173. LifeBrite fraudulently submitted, or caused the submission of, claims to Blue Cross NC for services that were not performed at or by LifeBrite, or on behalf of LifeBrite patients.

174. Blue Cross NC, relying on LifeBrite's misrepresentations, issued reimbursements to LifeBrite that should not have been paid.

175. Blue Cross NC conferred those benefits in reliance on the reasonable belief that the reimbursements were properly owed.

176. LifeBrite appreciated the benefit conferred by Blue Cross NC.

177. LifeBrite has unjustly accepted and retained those benefits.

178. LifeBrite should be required to make restitution for the benefits it received, retained, and appropriated because justice and equity require such restitution.

179. Restitution is required by public policy to promote the stability of insurance markets and to avoid the continuing unjust enrichment of unscrupulous providers at the expense of insurance companies, employer groups, and patients.

180. Blue Cross NC is entitled to restitution in an amount to be determined at trial, including but not limited to all amounts LifeBrite received from Blue Cross NC because of LifeBrite's scheme.

JURY DEMAND

Blue Cross NC demands that a jury determine all issues of fact so triable.

PRAYER FOR RELIEF

WHEREFORE, Blue Cross NC respectfully requests judgment in its favor granting the following relief:

- a) Actual and consequential damages in an amount to be determined at trial, plus pre- and post-judgment interest at the legal rate;
- b) Punitive damages as appropriate;
- c) Damages for violations of N.C. GEN. STAT. § 75-1.1, trebled in accordance with N.C. GEN. STAT. § 75-16;
- d) Attorneys' fees and costs pursuant to N.C. GEN. STAT. § 75-16.1.
- e) An order obligating LifeBrite to disgorge all revenues and profits derived from its scheme;
- f) A constructive trust or equitable lien in Blue Cross NC's favor on all property, real or personal or intangible wherever located, owned, or controlled by LifeBrite into which any of the proceeds of LifeBrite's misconduct have flowed;
- g) An injunction prohibiting LifeBrite from continuing its scheme;
- h) An award of Blue Cross NC's costs, including reasonable attorney's fees, in accordance with contractual provisions and ERISA § 502(g)(1);
- i) Other equitable relief, as described herein;
- j) A trial by jury for all matters so triable; and
- k) Any other relief deemed just, proper, and/or equitable.

Respectfully submitted, this the 16th day of May, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing **Answer and Counterclaims** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all attorneys of record::

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