



COMMONWEALTH OF KENTUCKY
 FRANKLIN CIRCUIT COURT
 DIVISION 2
 CIVIL ACTION NO. 18-CI-1027

AMELIA LONG, KAREN DEVIN, RICHARD
 HARDY II, TABITHA MARCUM, and SHERRIE
 TURNER, individually, and on behalf of a
 class of others similarly situated

PLAINTIFFS

v.

UNIVERSITY OF KENTUCKY; SUSAN KRAUSS,
 in her official capacity as Treasurer, University of
 Kentucky; COMMONWEALTH OF KENTUCKY,
 DEPARTMENT OF REVENUE; and ALLISON BALL, in
 her official capacity as Kentucky State Treasurer

DEFENDANTS

COMPLAINT

Plaintiffs Amelia Long, Karen Devin, Richard Hardy II, Tabitha Marcum and Sherrie Turner, individually, and on behalf of a class of others similarly situated, complain against Defendants University of Kentucky; Susan Krauss, in her official capacity as Treasurer, University of Kentucky; Commonwealth of Kentucky, Department of Revenue; and Allison Ball, in her official capacity as Kentucky State Treasurer, as follows:

Parties, Jurisdiction and Venue

1. Plaintiff Amelia Long is an individual who at times relevant to this Complaint was a resident of Fayette County, Kentucky. Ms. Long, at times relevant hereto, was a patient/customer of UK HealthCare, the trade name that the Defendant University of Kentucky uses to operate its health care businesses, who has had her wages, bank accounts and/or tax refunds unlawfully garnished, levied upon, or set off by the Commonwealth of Kentucky, Department of Revenue,

as hereinafter described, to collect health care debts allegedly owed by her to University.

2. Plaintiff Karen Devin is an individual who at times relevant to this Complaint was a resident of Fayette County, Kentucky. Ms. Devin, at times relevant hereto, was a patient/customer of UK HealthCare who has had her wages, bank accounts and/or tax refunds unlawfully garnished, levied upon, or set off by the Commonwealth of Kentucky, Department of Revenue, as hereinafter described, to collect health care debts allegedly owed by her to the University.

3. Plaintiff Richard Hardy II is an individual who at times relevant to this Complaint was a resident of Estill County, Kentucky. Mr. Hardy, at times relevant hereto, was a patient/customer of UK HealthCare who has had his wages, bank accounts and/or tax refunds unlawfully garnished, levied upon, or set off by the Commonwealth of Kentucky, Department of Revenue, as hereinafter described, to collect health care debts allegedly owed by him to the University, and has had liens asserted against his real and personal property by the Department of Revenue as to the alleged health care debts.

4. Plaintiff Tabitha Marcum is an individual who at times relevant to this Complaint was a resident of Fayette County, Kentucky. Ms. Marcum, at times relevant hereto, was a patient/customer of UK HealthCare who has had her wages, bank accounts and/or tax refunds unlawfully garnished, levied upon, or set off by the Commonwealth of Kentucky, Department of Revenue, as hereinafter described, to collect health care debts allegedly owed by her to the University.

5. Plaintiff, Sherrie Turner, is an individual who at times relevant to this Complaint was a resident of Campbell County, Kentucky. Ms. Turner, at times relevant hereto, was a patient/customer of UK HealthCare who has had her tax refunds and lottery winnings unlawfully

garnished, levied upon, or set off by the Commonwealth of Kentucky, Department of Revenue, as hereinafter described, to collect health care debts allegedly owed by her to the University, and has had liens asserted against her real and personal property by the Department of Revenue as to the alleged health care debts.

6. Defendant University of Kentucky (the "University") is a university founded under a land grant of 1862 by the Congress of the United States, and now governed under KRS 164.131(1)(a) by a board of trustees. Under KRS 164.160, the board of trustees is a "body corporate, under the name of board of trustees of the University of Kentucky, with the usual corporate powers." As part of these corporate powers, the University operates its hospitals and clinics through the assumed name of UK HealthCare. Defendant University of Kentucky may be served by service on William E. Thro, General Counsel, University of Kentucky, Office of Legal Counsel, Suite 301, Main Building, Lexington, Kentucky 40506-0032.

7. Susan Krauss, in her official capacity as Treasurer, University of Kentucky, oversees management of the University's financial functions including banking, cash management, debt, endowment, accounts payable, payroll, accounting and financial reporting. She is sued in her official capacity as Treasurer of the University, as the person responsible for ensuring payment of relief sought herein. Ms. Krauss may be served at Treasury Services, 356 Peterson Service Building 0005, University of Kentucky, Lexington, Kentucky 40506.

8. Defendant Commonwealth of Kentucky, Department of Revenue (sometimes hereafter referred to as the "Department"), is the primary tax collection entity for the Commonwealth of Kentucky. It operates the Enterprise Collections office, which purports under KRS 45.237 *et seq.*, to collect "Debts that are certified by an agency or by a local government," and to collect debts referred to it, purportedly under KRS 45.237 *et seq.* and other statutes, by the University.

The Commonwealth of Kentucky, Department of Revenue may be served through the Kentucky Attorney General or Assistant Attorney General, at 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601-3449.

9. Defendant Allison Ball is the duly elected Kentucky State Treasurer charged with the care and control of the Commonwealth's finances. She is sued in her official capacity as Kentucky State Treasurer, as the person responsible for ensuring payment of relief sought herein. Treasurer Ball may be served at 1050 US Highway 127 South, Suite 100, Frankfort, Kentucky 40601.

10. This Complaint raises the constitutionality of KRS 45.237 *et seq.* as they are applied to these facts, and facially, and thus under KRS 418.075 and related Kentucky law, the Attorney General should be served with a copy of the Complaint. The Attorney General may be served at 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601-3449.

11. This Court has subject matter jurisdiction over this action as it is an action to recover money unlawfully taken from citizens of Kentucky and held by the University and the Commonwealth in violation of, *inter alia*, KRS 45.237 *et seq.* This Court also has jurisdiction under Kentucky common law, KRS 45.111, and the Kentucky Constitution's Bill of Rights.

12. The Franklin Circuit Court is a proper venue for this action because the matter pertains to actions undertaken by the Department of Revenue in Frankfort to collect accounts referred to it by the University involving persons residing across the Commonwealth.

Allegations Common To All Counts

13. Plaintiff Amelia Long visited a health care facility operated by the University in 2012, for treatment of a medical issue. At the time of this visit, Plaintiff Long was covered through Kentucky Passport Health Care, a plan that administered Kentucky Medicaid benefits, or

else was or should have been eligible to participate in the University's financial assistance program and/or disproportionate share hospital program (collectively, the "DSH program"). Plaintiff Long had at least one other visit to a University emergency room in early 2013, and again she either was covered through Passport Health Care, or eligible for the DSH program. At all visits, Plaintiff Long informed University personnel of her insurance coverage and financial situation.

14. Plaintiff Long did not receive an itemization of the bill[s] for services rendered for her visits, nor did she receive any other communication from the University or any agent for the University relating in any manner to any alleged indebtedness to the University for medical services rendered.

15. The University certified Ms. Long's accounts as an "agency" debt and referred the debt to the Department pursuant to KRS 45.238 and/or KRS 45.241 which allows the Department to collect state "agency" debt if the debt is "certified by agency or by a local government." KRS 45.238(1). "Agency" is defined at KRS 45.237(1)(a), KRS 45.241(1)(c) and elsewhere to mean "an organizational unit or administrative body in the executive branch of state government as defined in KRS 12.010."

16. The Department imposed a 25% collection fee on the accounts, purportedly under KRS 45.238(3)(a)2 and/or KRS 45.241(7)(b)(1)(b), in an unknown amount, but believed to be in excess of \$7,000. The amount of this fee is greatly in excess of the cost of collection that the Department actually incurred in collecting any debt or account purportedly owed by Plaintiff Long.

17. Upon receipt of the referral from the University, the Department began to add interest on the accounts under KRS 45.238(3)(a)(1) and/or KRS 45.241(7)(b)(1)(a), at the tax

interest rate determined under KRS 131.183, and has continued to do so since the initial referral.

18. Despite several requests, neither the University nor the Department has sent to Plaintiff Long any itemization or other explanation of the purported accounts which would inform her of the details of the claim against her and the size of the accounts.

19. The Department first levied upon or garnished the Plaintiff Long's wages in 2016, while she was working in Lexington as a veterinary technician. The levy was the first notice that Plaintiff Long had of any sort that the University believed that she owed the University any money.

20. Plaintiff Long telephoned the Department to inquire about the levy, and was told that it was a waste of time to dispute the bill – essentially that she could do whatever she wanted, but that the agent had never seen anybody's bill adjusted over any kind of dispute. In light of the potential to lose her job over the wage levy, and through fear of the Department's power, Plaintiff Long felt compelled or coerced to enter into a payment plan under which she made periodic payments to the Department.

21. Plaintiff Long continued to make payments on her accounts until early February 2017, when her pregnancy compelled her to stop working temporarily and she had no income. Plaintiff Long delivered her first child on February 22, 2017. On or about February 23, 2017 – *the very next day after her baby was born* – the Department levied against the full balance of Plaintiff Long's bank account, apparently because she had not made a payment to the Department from her wages.

22. The Department as of April 30, 2018, has collected at least \$5,000, either through levies or from the Plaintiff Long's periodic payments, from which it remitted 80% to the University and retained 20% as its collection fee. Defendants claim an additional amount to be

owed by Plaintiff Long on the University account(s). Plaintiff Long disputes that she owes any amounts to the University.

23. Plaintiff Karen Devin visited a health care facility operated by the University in 2013, if not earlier, for evaluation of a cardiac issue. At the time of this visit, Plaintiff Devin had no health insurance and was living with her adult daughter, and was or should have been eligible to participate in the DSH program or other financial assistance programs.

24. At all visits, Plaintiff Devin informed University personnel of her financial situation. She was specifically told at an early visit that she should be eligible for financial assistance, and was provided financial forms to complete and to return (with further supporting information) to the University. Plaintiff Devin completed the information request and faxed the information to the University. Plaintiff Devin was or should have been eligible to participate in the DSH program or other financial assistance.

25. Plaintiff Devin did not receive an itemization of the bill[s] for services rendered for her visits, nor did she receive any other communication from the University or any agent for the University relating in any manner to any alleged indebtedness to the University for medical services rendered.

26. The University certified the Plaintiff's accounts as an "agency" debt and referred the debt to the Department pursuant to KRS 45.238 and/or KRS 45.241. The Department imposed a 25% collection fee on the accounts, purportedly under KRS 45.238(3)(a)2 and/or KRS 45.241(7)(b)(1)(b), in an unknown total amount, but in excess of the cost of collection that the Department actually incurred in collecting any debt or account purportedly owed by Plaintiff Devin.

27. Upon receipt of the referral from the University, the Department added interest on

the accounts under KRS 45.238(3)(a)1 and/or KRS 45.241(7)(b)(1)(a), at the tax interest rate determined under KRS 131.183, and has continued to do so since the initial referral.

28. Despite several requests, neither the University nor the Department sent to Plaintiff Devin any itemization or other explanation of the purported accounts, which would inform her of the details of the claim against her and the size of the accounts. On information and belief, the total amount sought by the University and the Department totaled close to \$8,000.

29. The Department first levied upon or applied a set-off to the Plaintiff Devin's tax refund in 2016. The levy or set-off was the first notice that Plaintiff Devin had of any sort that the University believed that she owed the University any money.

30. Plaintiff Devin telephoned the Department to inquire about the levy, and was told by Department personnel that "you are depriving the Commonwealth of Kentucky of resources." The Department that day and ever since has failed to supply Plaintiff Devin with any documentation that supports the University's claim or the Department's authority to levy the account. Through fear of the Department's power, Plaintiff Devin felt compelled or coerced to enter into a payment plan, under which she paid \$25/month to the Department.

31. The Department, as of April 30, 2018, has collected approximately \$2,000, either through levies, tax refund offsets, or from the Plaintiff Devin's periodic payments, from which it remitted 80% to the University and retained 20% for its collection fee.

32. The total amount that the Defendants claim to be owed by the Plaintiff Devin on the University account(s), including amounts added by the Department for collection fees and interest, is believed to be approximately \$8,000. Plaintiff Devin disputes that she owes any amounts to the University.

33. Plaintiff Richard Hardy II first visited an emergency room facility operated by the

University in 2012, for evaluation of kidney stones. At the time of this visit, Plaintiff Hardy had changed jobs and was not yet eligible for health insurance with his new employer. In light of this limited income and two dependents, Plaintiff Hardy was or should have been eligible to participate in the DSH program. Plaintiff Hardy's mother, who accompanied him to the initial visit, informed University personnel of his insurance and financial situation.

34. Plaintiff Hardy has no recollection of receiving any itemization of the bill(s) for services rendered for his initial visit or for later visits, nor of receiving any other communication from the University or any agent for the University relating in any manner to any alleged indebtedness to the University for medical services rendered.

35. On information and belief, the University generated several accounts for his visits relating to his kidney condition, and the University certified Plaintiff Hardy's accounts as "agency" debts and referred the debts to the Department pursuant to KRS 45.238 and/or KRS 45.241. The Department imposed a 25% collection fee on the accounts, purportedly under KRS 45.238(3)(a)2 and/or KRS 45.241(7)(b)(1)(b), in an unknown total amount, but believed to be approximately \$12,000. The amount of this fee is greatly in excess of the cost of collection that the Department actually incurred in collecting any debts or accounts purportedly owed by Plaintiff Hardy.

36. Upon receipt of the referral from the University, the Department added interest on the accounts under KRS 45.238(3)(a)1 and/or KRS 45.241(7)(b)(1)(a), at the tax interest rate determined under KRS 131.183, and has continued to do so since the initial referral.

37. The Department first levied upon or garnished the Plaintiff Hardy's wages in approximately 2015, and has since levied his bank account. The wage levy was the first notice that Plaintiff Hardy had of any sort that the University believed that he owed the University any

money. The Department also filed in the office of the Estill County Clerk a notice of lien against any real or personal property owned by Plaintiff Hardy, a lien that remains of record.

38. Through fear of the Department's power, Plaintiff Hardy felt compelled or coerced to enter into a payment plan, under which he has for several years paid \$25/week to the Department.

39. The Department, as of April 30, 2018, has collected approximately \$10,000, either through levies or from the Plaintiff Hardy's periodic payments, from which it remitted 80% to the University and retained 20% for its collection fee. Defendants claim an additional amount, believed to be as much as \$50,000, to be owed by Plaintiff Hardy on the University account(s). Plaintiff Hardy disputes that he owes any amounts to the University.

40. Plaintiff Tabitha Marcum took her infant son to a health care facility operated by the University in 2015 for treatment of a medical issue. She believes that she took her son again to the University for treatment after this initial visit. At all times relevant hereto, Ms. Marcum carried health or medical insurance that should have covered the treatments in question.

41. Plaintiff Marcum did not receive an itemization of the bill(s) for services rendered for her visits, nor did she receive any other communication from the University or any agent for the University relating in any manner to any alleged indebtedness to the University for medical services rendered.

42. The University certified Plaintiff Marcum's accounts as "agency" debts and referred the debts to the Department pursuant to KRS 45.238 and/or KRS 45.241. The Department imposed a 25% collection fee on the accounts, purportedly under KRS 45.238(3)(a)2 and/or KRS 45.241(7)(b)(1)(b), in an unknown total amount. The amount of this fee is greatly in excess of the cost of collection that the Department actually incurred in collecting any debts or accounts

purportedly owed by Plaintiff Marcum.

43. Upon receipt of the referral from the University, the Department added interest on the accounts under KRS 45.238(3)(a)(1) and/or KRS 45.241(7)(b)(1)(a), at the tax interest rate determined under KRS 131.183, and has continued to do so since the initial referral.

44. Neither the University nor the Department has sent to Plaintiff Marcum any itemization or other explanation of the purported accounts, which would inform her of the details of the claim against her.

45. On or about April 15, 2018, the Department served a notice of levy upon Plaintiff Marcum's bank, Central Bank & Trust Co. in Lexington, ordering Central Bank to remit the balances in Plaintiff Marcum's accounts to the Department. Soon thereafter, Central Bank remitted \$3,574.34 from Plaintiff Marcum's checking and savings accounts to the Department. The levy was the first notice that Plaintiff Marcum had of any sort that the University believed that she owed the University any money.

46. Plaintiff Marcum protested the levy to the Department by letter of protest, but the Department refused to consider the protest, informing her that it would continue to collect the University's accounts.

47. The Department, on or about May 16, 2018, sent Plaintiff Marcum a notice that the original amount of the University account, at least for the initial visit, was \$3,491.45, and that the Department under KRS 45.241(7)(b) had added a collection fee of \$872.86 (or 25% of the account) to the bill, plus interest, for a "total liability" of \$4,541.56. This notice also recognized the receipt of \$3,574.34 from the aforementioned bank levy, of which the Department had retained \$714.86 for its collection fee, and remitted the remainder to the University. The notice indicates that the Defendants claim Plaintiff Marcum still owes an additional \$967.22 as to the

additional visit to UK HealthCare. Plaintiff Marcum disputes that she owes any amounts to the University.

48. Plaintiff Sherrie Turner first visited a health care facility operated by the University in about 2014, for treatment of a chronic medical issue for which she had previously been treated at Cleveland Clinic. At the time of this first visit and every subsequent visit, Plaintiff Turner was covered by a health care policy issued by Humana to her employer. At all visits, Plaintiff Turner informed University personnel of her insurance coverage.

49. Plaintiff Turner had been admitted as a patient at the University's hospital in Lexington in 2014. She was discharged from the hospital, but within hours the same medical issue required her to visit her local emergency room in Edgewood, Kentucky, from where she was soon transferred back to the University's hospital. On information and belief, the University's agreement with Humana precludes the University's billing Humana or the patient, for a subsequent re-admission, after the University had prematurely discharged a patient, as occurred here.

50. On information and belief, Humana ultimately declined financial responsibility for the readmission, believed to be in an amount over \$25,000, but the University did not contact Plaintiff Turner about any matter whatsoever about her account.

51. The University certified Plaintiff Turner's accounts as "agency" debts and referred the debts to the Department pursuant to KRS 45.238 and/or KRS 45.241. The Department imposed a 25% collection fee on the accounts, purportedly under KRS 45.238(3)(a)2 and/or KRS 45.241(7)(b)(1)(b), in an unknown total amount, but believed to be approximately \$10,000. The amount of this fee is greatly in excess of the cost of collection that the Department actually incurred in collecting any debts or accounts purportedly owed by Plaintiff Turner.

52. Upon receipt of the referral from the University, the Department began to add interest on the accounts under KRS 45.238(3)(a)(1) and/or KRS 45.241(7)(b)(1)(a), at the tax interest rate determined under KRS 131.183, and has continued to do so since the initial referral.

53. Despite several requests, neither the University nor the Department has sent to Plaintiff Turner any itemization or other explanation of the purported accounts which would inform her of the details of the claim against her and the size of the accounts.

54. The Department first contacted Plaintiff Turner about the purportedly unpaid accounts in January 2017. Soon thereafter, her 2016 state income tax refund was levied upon, or set off from, by the Department. The 2017 contact by the Department levy was the first notice that Plaintiff Turner had of any sort that the University believed that she owed the University any money.

55. Through fear of the Department's power and the potential effect it could have on her public employment, Plaintiff Turner felt compelled or coerced to enter into a payment plan under which she made periodic payments to the Department, as well as a separate payment agreement with Central Kentucky Management Services, the University's collection agency.

56. Plaintiff Turner has continued to make payments on her accounts until the date of this Complaint, and has had her state tax refunds, and lottery winnings, levied upon or set off from, by the Department. The Department as of May 31, 2018 has collected approximately \$3,900, either through levies, setoffs or Plaintiff Turner's periodic payments, from which it remitted 80% to the University and retained 20% as its collection fee. Defendants claim an additional amount to be owed by Plaintiff Turner on the University account(s), in amount believed to be over \$25,000.

57. Plaintiff Turner disputes that she owes any amounts to the University.

58. Neither the University nor the Department obtained a court judgment against any Plaintiffs or class members, as to any debt allegedly incurred as a result of any Plaintiff or class member obtaining medical services at the University, nor did the University or the Department file a civil action against any Plaintiffs or class members to collect the alleged accounts referred to the Department for collection, nor did the University certify to the Department that any alleged debt was final due and owing, all appeals and legal actions having been exhausted.

59. The University or UK HealthCare is not a state “agency” as defined by KRS 45.237(1)(a) or KRS 45.241(1)(c), or elsewhere, which restricts the Department to collecting debts of state “agencies” as defined at KRS 12.010. Neither the University nor UK HealthCare is an “organizational unit” or “administrative body” in the executive branch of state government as defined in KRS 12.010. *See* KRS 12.010(1) and 12.010(8). The Fayette Circuit Court, Division III, in the matter of *Sarah Moore v. University of Kentucky, et al.*, Civil Action 17-479, has entered a declaratory judgment to this effect, which ruling is on appeal.

60. KRS 45.241 allows the Department only to collect “liquidated debts” of state agencies, which is defined at KRS 45.241(1)(b).1 to mean a debt “which has been certified by an agency as final due and owing, all appeals and legal actions having been exhausted.”

61. Some of the accounts of the Plaintiffs and class members that were referred by the University to the Department were bills generated by physicians and medical providers at the University. These providers, by contract, assigned their receivables to Kentucky Medical Services Foundation (“KMSF”), which is affiliated with and controlled by employees or agents of the University. KMSF referred these provider accounts for collection to Central Kentucky Management Services, Inc. (“CKMS”), a corporation affiliated with the University that acts as a collection agency for the accounts of the University and of physicians/providers via KMSF.

These KMSF accounts (generated by physician/providers) were also referred to the Department as “agency” debts.

62. Neither KMSF nor CKMS is an “agency” as defined at KRS 45.237(1)(a) or KRS 45.241(1)(c), or elsewhere, nor are they in or part of the executive branch of state government.

63. There is no statutory or other legal basis for the University to certify its debts as state “agency” debts or to refer them as such to the Department for collection, nor is there any statutory or other legal basis for the Department to take actions to collect the debts of the University or UK HealthCare as “agency” debts, including the assessment, collection and retention of the 25% collection fee under KRS 45.238(3)(a)(2) and/or KRS 45.241(7)(b)(1)(b).

64. The Department took collection actions against the Plaintiffs and class members, including without limitation levying against and/or garnishing the patients’ creditors, offsetting the patient’s Kentucky state income tax return, and filing notices of lien in the public records against the patient’s personal and real property.

65. The Department returned 80% of the amounts it collected to the University, or to entities affiliated with the University, and retained 20% of the amounts collected as its collection fee under KRS 45.238(3)(a)2 and/or KRS 45.241(7)(b)(1)(b). The amount of the Department’s collection fee greatly exceeds the actual cost of collection that the Department actually incurred in collecting any individual debt or account.

66. Through fiscal year 2017, the Department has collected in excess of \$48,000,000 from the Plaintiffs and class members on the University’s health care accounts. Of that amount, the Department has retained approximately \$9,600,000 for itself, and remitted more than \$38,000,000 to the University. The University and Department since the end of fiscal year 2017 have continued to collect accounts in the manner set forth above.

Class Allegations

67. Plaintiffs incorporate all other allegations contained in the Complaint as if fully set forth herein.

68. This action asserts claims on behalf of a class pursuant to Kentucky Civil Rules 23.01 and 23.02 as follows:

All persons who, within ten (10) years of the filing of the Complaint herein, were subjected to actions taken by Defendants to collect on accounts with UK Healthcare pursuant to KRS 45.237 *et seq.* and 45.241(1)(c).

69. Plaintiffs reasonably estimate that members of the Class exceed ten thousand (10,000) persons and therefore individual joinder of all members is impracticable.

70. There are questions of law and fact common to the Class that predominate over any questions affecting only individual class members including, but not limited to:

- a. Whether the University is “an agency, organizational unit or administrative body in the executive branch of state government as defined in KRS 12.010,” within the meaning of KRS 45.237 (1)(a) and/or KRS 45.241 (1)(c);
- b. Whether the University referred its UK Healthcare accounts to the Department for collection pursuant to KRS 45.237 (1)(a) and/or KRS 45.241 (1)(c);
- c. Whether the University unlawfully referred its UK Healthcare accounts to the Department for collection pursuant to KRS 45.237 (1)(a) and/or KRS 45.241 (1)(c);
- d. Whether the Department added a 25% collection fee to the UK Healthcare accounts referred by the University for collection, and whether its doing so was unlawful;
- e. Whether the Department took actions to collect UK Healthcare accounts from Plaintiffs and class members;
- f. Whether the Department’s collection procedures violated the due process rights of Plaintiffs and class members under the United States and Kentucky Constitutions;

- g. Whether it was legally permissible for the University to “balance bill” or refer to the Department for collection, accounts that were subject to the State’s disproportionate share hospital program set forth at KRS 205.639 *et seq.*

71. Plaintiffs’ claims are typical of those of the Class in that their claims are predicated on unlawful actions taken by Defendants to collect UK Healthcare accounts; Plaintiffs’ claims are not subject to any unique defenses; and the relief sought is common to the Class.

72. Plaintiffs are adequate representatives of the Class because they have no interests adverse to or in conflict with members of the Class they seek to represent, and they have retained counsel competent and experienced in conducting complex class action litigation. Plaintiffs and their counsel will adequately protect the interests of the Class.

73. Defendants have engaged in a pattern of misconduct common to the entire Class so that class-wide relief is appropriate.

74. The common pattern of Defendants’ misconduct and the common theories for redressing that misconduct make a class action superior to other available methods for fairly and efficiently adjudicating the underlying dispute. The damages suffered by each individual Class Member on balance are relatively small, while the burden and monetary expense needed to individually prosecute this case against Defendants is substantial. Thus, it would be virtually impossible for Class Members individually to redress effectively the wrongs done to them. Moreover, even if class members could afford individual actions, a multitude of such individual actions still would not be preferable to class-wide litigation.

75. By contrast, a class action presents far fewer litigation management difficulties, and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. The class is readily definable and prosecution as a class action will eliminate the possibility of repetitious litigation while also providing redress for those claims that may be

too small to warrant the expenses of individual, complex litigation. Also, or in the alternative, the Class may be certified because Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making preliminary and final declaratory relief appropriate.

76. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and result in inconsistent adjudications, which would be dispositive of at least some of the issues and hence interests of the other members not party to the individual actions, would substantially impair or impede their ability to protect their interests, and would establish incompatible standards of conduct for the party opposing the Class. A class action can determine the legality of Defendants' actions relative to all class members with judicial economy.

Count I – Declaratory Judgment on KRS 45.227 et seq.

77. Plaintiffs incorporate all other allegations contained in the Complaint as if fully set forth herein.

78. KRS 45.238 allows state “agency” debts to be referred to the Department for collection, but KRS 45.237(1)(a) defines “Agency” to mean “an organizational unit or administrative body in the executive branch of state government as defined in KRS 12.010.” KRS 45.241(6) & (7) similarly allows “liquidated debts” of a state “agency” to be referred to the Department for collection, but defines “agency” to mean “an organizational unit or administrative body in the executive branch of state government, as defined in KRS 12.010.” KRS 45.241(1)(c).

79. The University is not an “agency” as defined by KRS 45.237(1)(a) or KRS 45.241(1)(c), and therefore may not legally refer patient accounts to the Department for collection, and the Department may not legally take action to collect the debt allegedly owed to

the University or its providers by the Plaintiffs or by other class members, including specifically levying or garnishing back accounts, wages, and tax returns, or asserting and perfecting liens against the property of the Plaintiffs or class members.

80. The Plaintiffs are entitled to a judgment under KRS 418.040 *et seq.* declaring that the University is not “an organizational unit or administrative body in the executive branch of state government as defined in KRS 12.010”; that it may not legally refer UK HealthCare or provider accounts or debts to the Department for collection under KRS 45.237 to .241; that the Department may not legally take action to collect the debt allegedly owed by the Plaintiff or class members, including specifically levying or garnishing back accounts, wages, and tax returns, or asserting and perfecting liens against the property of the Plaintiffs or class members; and that any funds collected by the Department lawfully are, and have been, property of the Plaintiffs and class members.

81. Under KRS 418.055, “Further relief, based on a declaratory judgment, order or decree, may be granted whenever necessary or proper.” The Plaintiffs and class members are entitled to such further relief in the form of an order and judgment requiring the Defendants to return to the Plaintiffs and class members all funds unlawfully collected by the Defendants as to the UK HealthCare accounts. *See* KRS 45.111, which provides that: “Any funds received into the State Treasury which are later determined not to be due to the state may be refunded to the person who paid such funds into the Treasury. . . .” The amounts herein referenced are not and never were property of the State, but instead property of the Plaintiffs and class members that was unlawfully taken. The Plaintiffs and class members are entitled to the equitable remedy of restitution of their moneys from the Defendants.

82. As a result of the foregoing, the Defendants, Allison Ball, in her official capacity as

Kentucky State Treasurer, and Susan Krauss, in her official capacity as the University's Treasurer, should be ordered to return all funds taken from the Plaintiffs and class members as herein described.

Count II – Kentucky Constitutional Violations

83. Plaintiffs incorporate all other allegations contained in the Complaint as if fully set forth herein.

84. The collection scheme as herein described consists of several steps. The University or CKMS (the University-affiliated collection agency) sends an original bill for the medical services allegedly provided to the patient (or in the case of children or disabled to the patient's parents or guardians), to an address inputted by the University by clerks at the time of (or before) the delivery of the service. This original communication, typically sent weeks, if not months, after the delivery of the service, contains little or no itemization within it, such as the individualized cost of each service purportedly delivered by the University. Neither the University nor CKMS make any attempt to verify if the address for the patient is valid.

85. If the patient fails to make a response that is satisfactory to the University or CKMS, the University or CKMS then sends additional communications to the address on file, seeking to have the account paid. The University has established no practices and procedures to ensure that it has a current address for the patient, or to otherwise comply with 103 KAR 1:070(2)(1).

86. Ultimately, CKMS sends to the address on file what it refers to as "Letter 8," which includes the notation that "This communication is from a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose." Letter 8 further states that:

If we do not hear from you within fourteen (14) days from the date of this notice, your account will be turned over to the Commonwealth of Kentucky, Department of Revenue for collection pursuant to Kentucky Revised Statutes (KRS) 45.237, 45.238, and 45.241.

Letter 8 then continues with the following appeal or protest procedure:

Under Kentucky law you have the right to protest this bill and request a conference with a University of Kentucky, Hearing Officer. If you wish to request a conference you must, within fourteen (14) days of the date of this notice:

- 1) In writing, explain the reason(s) that you dispute this bill;
- 2) Attach a copy of all relevant documentation supporting your explanation, and keep a copy for your records;
- 3) Include your account number and current contact information (home address, telephone number, email address);
- 4) Indicate whether you wish to appear in person or by telephone at the conference;
- 5) Mail your explanation to:
Central Kentucky Management Services, Inc,
Lockbox 951336
Attn: DOR Coordinator
Cleveland, OH 44193

87. CKMS does not identify itself in Letter 8, or elsewhere, as being affiliated with the University.

88. The protest procedure outlined in Letter 8 does not include the various due process rights inherent to a fair hearing, including the patient's right to counsel; the right to an impartial hearing officer under Kentucky law (and to the extent it applies, KRS 13B.040(2)(a)); the right to subpoena documents, to discover the University's documents and records; to cross-examine witnesses and to call witnesses by subpoena if necessary; the right to know which party has the burden of proof; the right to a jury under KRS 29A.270 or Kentucky Constitution, Section 7; or the right to appeal the determination to a court of law. The University has established no procedure, written or otherwise, that grants such rights to a protesting patient, nor did it communicate to patients what rights the patient would have at any such hearing. Letter 8 further grants the patient only 14 days from the date on the letter to protest the University's bill, so even

those persons for whom the University has a correct address must prepare and submit their protests within about 11 days from receipt of Letter 8.

89. Those patients who do protest the legitimacy of their bill upon the receipt of Letter 8 are given a truncated hearing, presided over by a “hearing officer” who in fact is an attorney in the University’s general counsel’s office, who, in a hopelessly conflicted situation, cannot ensure that the patient has even the minimal due process rights herein described.

90. As to patients who do not respond to Letter 8 by protest or by payment within 14 days of the date of Letter 8, the University’s practice is to turn the accounts “over to the Commonwealth of Kentucky, Department of Revenue for collection pursuant to Kentucky Revised Statutes (KRS) 45.237, 45.238, and 45.241.” The Department assesses an arbitrary 25% fee on the total amount of the alleged account. The Department then collects the alleged account, plus its 25% fee, by whatever means it has by statute to collect unpaid taxes, including without limitation levying against and/or garnishing the patients’ bank accounts, wages, lottery winnings, etc.; offsetting the patient’s Kentucky state income tax return; and filing notices of lien in the public records against the patient’s personal and real property. The Department provides no avenue to protest the validity of the debt, nor to challenge any levy, lien, offset, or other action taken by the Department, including the legality of the 25% fee assessed by the Department, and retained by the Department.

91. In short, the University, before referring the account to the Department for collection, fails to ensure that the patient is provided an itemization of the medical services for which it seeks payment; fails to ensure that the patient is actually receiving its communications, thereby generally failing to effect proper service and notice of the claim on the patient; fails to inform the patient that CKMS is affiliated with the University; fails to provide an adequate manner or

means by which a patient may protest the amount requested by the University; fails to ensure that the patient's constitutional right to a jury is protected; and fails generally to allow a patient to defend himself against the claim of the University.

92. The actions, conduct and practices of the University and Department, as hereinabove described and as administered, violate various sections of the Kentucky Constitution:

- a. Section 1, Fifth, by interfering with the right of the Plaintiffs and class members in "protecting property."
- b. Section 1, Sixth, by infringing the right of the Plaintiffs and class members to petition the "government for redress of grievances."
- c. Section 2, by amounting to an exercise of "Absolute and arbitrary power over the lives, liberty and property" of the Plaintiffs and class members.
- d. Section 7, by infringing on the right of the Plaintiffs and class members to a trial by jury as to the alleged debt owed to the University and the imposition by the Department of any fee, including the 25% fee.
- e. Section 10, by infringing on the right of the Plaintiffs and class members to be secure in their possessions and from unreasonable seizure.
- f. Section 13, by infringing the right of the Plaintiffs and class members not to have "property be taken or applied to public use without . . . just compensation being previously made to him."
- g. Section 14, by denying the right of the Plaintiffs and class members to have courts open to them to "have remedy by due course of law."
- h. Section 17, by imposing on the Plaintiffs and class members excessive fines, in the form of an arbitrary 25% collection fee

93. Even if the procedures in KRS 45.237 to 45.241 applied to the University, the statutes are facially unconstitutional by (1) failing to ensure that the patient actually receives the original billing statement from the University, and/or Letter 8 or similar correspondence that describes any right to protest or appeal the University's determination that the patient owes it money, thereby depriving patients from being informed of the charges against them; (2) failing

to provide a right to a jury trial in what, at its core, is a claim by the University for payment on an commercial account.; and (3) imposing an excessive and arbitrary 25% collection fee, or fine or tax, on Plaintiffs and class members. In essence, the statutes, if they did apply, would allow the University and the Department to secure and enforce the equivalent of a personal judgment against persons – the Plaintiffs and the class members – who were constructively summonsed and served, and who had no right to a jury a trial over a commercial dispute.

94. As a result of the foregoing, the Plaintiffs and the class members have had their property unlawfully taken, seized and/or converted, in a total amount in excess of \$48,000,000, for which they seek the equitable remedy of restitution.

95. The Plaintiffs and class members are further entitled to a declaratory judgment that KRS 45.237 to 45.241 are facially unconstitutional as hereinabove described; that the practices of the University and Department in applying KRS 45.237 to 45.241 to the University's accounts are unconstitutional; and that the Plaintiffs and class members are entitled to such further relief in the form or an order and judgment requiring the Defendants to return to the Plaintiffs and class members all funds unlawfully collected by the Defendants as to the UK HealthCare accounts, and/or the equitable remedy of restitution of their moneys from the Defendants.

96. As a result of the foregoing, the Defendants, Allison Ball, in her official capacity as Kentucky State Treasurer, and Susan Krauss, in her official capacity as the University's Treasurer, should be ordered to return all funds taken from the Plaintiffs and class members as herein described.

Count III – Violation of KRS 205.640(5)

97. Plaintiffs incorporate all other allegations contained in the Complaint as if fully set forth herein.

98. Kentucky operates a Medicaid-funded program known as the Disproportionate Share Hospital (“DSH”) program, set forth generally at KRS 205.639 to .641. *See* 42 U.S.C. § 1396r-4. Under the DSH program, Kentucky gets an annual payment from Medicaid, and from that payment the state distributes funds to hospitals in Kentucky who serve a large number of Medicaid-eligible, indigent and/or uninsured individuals.

99. KRS 205.640 requires the University to make periodic reports to the state Department for Medicaid Services of uncompensated care provided to qualified individuals and families, who are generally indigent and uninsured, but not qualified for Medicaid or the Kentucky Children’s Health Insurance Program. The state uses data from that report and from reports of other hospitals to calculate the amounts going from the DSH program to the each hospital, including the University.

100. The University is and has been eligible for distributions from the DSH program for all periods relevant hereto. In the Fiscal Year ending June 30, 2013, for example, the University received approximately \$27,395,469 from the DSH program. In the Fiscal Year ending June 30, 2012, the University received approximately \$26,331,161 from the DSH program, and in Fiscal Year ending June 30, 2011, it received \$25,380,737.

101. KRS 205.640(5) provides that “Hospitals receiving reimbursement under this section and KRS 205.641 shall not bill patients for services provided to patients not eligible for medical assistance with family incomes up to one hundred percent (100%) of the federal poverty level.”

102. Plaintiffs Long, Devin and Hardy all met the income and financial eligibility rules for inclusion in the DSH program, including those set out at KRS 205.640(5) at the time that they received services.

103. On information and belief the University submitted the names of Plaintiffs Long Devin and Hardy on the periodic reports to the Department for Medicaid Services as part of the DSH program. Other class members were also reported by the University to the Department for Medicaid Services as being indigent and subject to the DSH program.

104. The University and the Department could not under KRS 205.640 lawfully bill or collect any amounts from patients, including the Plaintiffs and class members, who were eligible for inclusion in the DSH program, or the University's financial assistance program, or who were reported by the University to the Department for Medicaid Services for reimbursement under the DSH program. The University, in fact, billed such patients, collected some amounts on its own or through CKMS, referred outstanding accounts to the Department for collection, and received payments on those bills either through the Department's direct collection activities or through payment plans arranged under threat of continued coercive collection activities.

105. The University and the Department, then, used illegal methods to collect illegal debts, and the Plaintiffs and the class members are entitled to the equitable remedy of restitution of their moneys from the Defendants, to which such moneys never rightfully belonged.

106. As a result of the foregoing, the Defendants, Allison Ball, in her official capacity as Kentucky State Treasurer, and Susan Krauss, in her official capacity as the University's Treasurer, shall be ordered to return all funds taken from the Plaintiffs and class members as herein described.

Count IV – Relief on the Ground of Mistake

107. Plaintiffs incorporate all other allegations contained in the Complaint as if fully set forth herein.

108. The University, CKMS (on the University's behalf) and the Department

communicated to the Plaintiffs and the class members that the University had the legal right and authority to refer its accounts to the Department, and that the Department had the legal right and authority to collect those accounts. The Department, in fact, did collect those accounts, remitted 80% of the amounts collected to the University or its affiliated entities, and retained 20% of the amounts collected for its own use or for the General Fund. These communications consisted of prepared and sometimes “form” communications, including Letter 8, whereby the Defendants attempted to collect the accounts at issue.

109. In fact, as set forth above, the University and the Department did not have and do not have the legal right and authority to collect the University’s accounts in the manner described herein. The communications of the University and Department to Plaintiffs and class members that they did have such legal right and authority to collect accounts were based on mistake, as were their actions in collecting the subject health care accounts.

110. Similarly, the University, CKMS and the Department communicated to the Plaintiffs and the class members that the University and the Department had the legal right and authority to collect accounts from those patients who were or should have been covered by the DSH program. In fact, KRS 205.640(5) made it illegal for the University and the Department to collect from such patients, and the communications of the University and the Department to Plaintiffs and class members that they did have such legal right and authority to do so were based on mistake, as were their actions in collecting the subject health care accounts. These communications consisted of prepared and sometimes “form” communications, including Letter 8, whereby the Defendants attempted to collect the accounts at issue.

111. The University and Department had a duty of good faith in dealing with the University’s patients, including the Plaintiffs and class members, which duty extended to a duty

of disclosure to give them honest, accurate and reliable information about the scope of the Defendants' legal authority and rights with respect to the accounts in question.

112. The University and the Department mistakenly informed the Plaintiffs and class members of the extent of the Defendants' rights and authority to collect the University's accounts, when in fact the Defendants did not have the rights and authority to collect the accounts in the manner herein described. This failure to accurately inform the Plaintiffs and class members resulted in their funds being taken by mistake, on which an action for relief may be based.

113. The Plaintiffs and class members did not discover the mistake of the University and the Department as to their legal authority to collect on the subject accounts, until the Fayette Circuit Court entered its ruling on February 12, 2018, given that citizens may reasonably assume that their government, including the Department, has acted in compliance with the law.

114. As a result of the foregoing, the Plaintiffs and class members have suffered a loss in the form of moneys received by the state in error or by mistake, and the Plaintiffs and class members are entitled to the equitable remedy of restitution of their moneys from the Defendants, to which such moneys never rightfully belonged.

115. As a result of the foregoing, the Defendants, Allison Ball, in her official capacity as Kentucky State Treasurer, and Susan Krauss, in her official capacity as the University's Treasurer, shall be ordered to return all funds taken from the Plaintiffs and class members as herein described.

Count V – Excessiveness of the Department's 25% Collection Fee

116. Plaintiffs incorporate all other allegations contained in the Complaint as if fully set forth herein.

117. The Department in its regular course of business sends periodic account statements to the Plaintiffs and class members, setting forth the amount of the original account and listing any payments made on the account. Those statements on the first page states clearly that the 25% collection fee was assessed under KRS 45.241(7)(b).

118. KRS 45.241(7)(b)(3) does not allow the Department to collect and retain a 25% fee from the Plaintiffs and/or the class members, but only allows the Department to “deduct and retain from the liquidated debt recovered an amount equal to *the lesser* of the collection fee or the actual expenses incurred in the collection of the debt.”

119. Even if the Department had the authority to collect the University’s accounts as herein described, the Department has unlawfully retained the entire amount of the 25% collection fee it received from the Plaintiffs and class members, rather than its actual expenses incurred in the collection of the account.

120. The 25% collection fee set forth at KRS 45.238(3)(a)(2) and KRS 45.241(7)(b)(1)(b) applies only to debts of executive state agencies, as herein described, and in the case of KRS 45.241(7)(b)(1)(b), to “liquidated debts,” defined at KRS 45.241(1)(b)(1) to mean “a legal debt for a sum certain which has been certified by an agency as final due and owing, all appeals and legal actions having been exhausted . . .”

121. Neither the University nor the Department initiated any legal actions against the Plaintiffs or class members with respect to the University’s medical accounts, which would have resulted in “all legal appeals and legal actions having been exhausted” prior to the referral of the accounts to the Department. There is therefore no statutory authority for the Department to add or retain a 25% fee, or any amount over the actual cost of collection, on moneys recovered from the Plaintiffs and class members.

122. Even if the Department had the authority to collect the University's accounts as herein described, the 25% collection fee is arbitrary, excessive and punitive, exceeding the 20% maximum penalty for failure to pay taxes under 131.180(1). The 25% collection fee thus violates the excessive fines clause of Section 17 of the Kentucky Constitution, amounts to the exercise of absolute and arbitrary power over the property of the Plaintiffs and class members, and constitutes a taking of their property without due process, in violation of Section 1 (Fifth), Section 10 and Section 13 of the Kentucky Constitution.

123. As a result of the foregoing, the Plaintiffs and class members have suffered a loss in the form of the Department's retention of the 25% collection fee, and the Plaintiffs and class members are entitled to the equitable remedy of restitution of their moneys from the Department.

124. As a result of the foregoing, the Defendant, Allison Ball, in her official capacity as Kentucky State Treasurer, shall be ordered to return all funds taken from the Plaintiffs and class members as herein described.

WHEREFORE, the Plaintiffs, Amelia Long, Karen Devin, Richard Hardy II, Tabitha Marcum and Sherrie Turner, individually, and on behalf of a class of others similarly situated, request the following relief from the Defendants, University of Kentucky; Susan Krauss, in her official capacity as Treasurer, University of Kentucky; Commonwealth of Kentucky, Department of Revenue; Central Kentucky Management Services; and Allison Ball, in her official capacity as Kentucky State Treasurer:

A. On Count I, a judgment declaring that UK HealthCare and the University may not legally refer debts to the Enterprise Collections Office for collection, that the Department of Revenue and/or the Enterprise Collections Office may not legally undertake efforts to collect the debts allegedly owed by the Plaintiffs or similarly situated persons; a judgment for relief in the

form of the equitable remedy of restitution of their moneys from the Defendants; and an Order requiring Defendants, Allison Ball, in her official capacity as Kentucky State Treasurer, and Susan Krauss, in her official capacity as the University's Treasurer, to return all funds taken from the Plaintiffs and class members as herein described.

B. On Count II, a judgment declaring that KRS 45.237 to 45.241 are facially unconstitutional as hereinabove described; that the practices of the University and Department in applying KRS 45.237 to 45.241 to the University's accounts are unconstitutional; and that the Plaintiffs and class members are entitled to such further relief in the form of an order and judgment requiring the Defendants to return to the Plaintiffs and class members all funds unlawfully collected by the Defendants as to the UK HealthCare accounts; a judgment for relief in the form of the equitable remedy of restitution of their moneys from the Defendants; and an Order requiring Defendants, Allison Ball, in her official capacity as Kentucky State Treasurer, and Susan Krauss, in her official capacity as the University's Treasurer, to return all funds taken from the Plaintiffs and class members as herein described.

C. On Count III, a judgment on the claim that the University and Department had no legal right to collect on accounts that were or should have been covered by the DSH program, in the form of the equitable remedy of restitution of their moneys from the Defendants; and an Order requiring Defendants, Allison Ball, in her official capacity as Kentucky State Treasurer, and Susan Krauss, in her official capacity as the University's Treasurer, to return all funds taken from the Plaintiffs and class members as herein described.

D. On Count IV, a judgment for relief in the form of the equitable remedy of restitution of their moneys from the Defendants; and an Order requiring Defendants, Allison Ball, in her official capacity as Kentucky State Treasurer, and Susan Krauss, in her official capacity as the

University's Treasurer, to return all funds taken from the Plaintiffs and class members as herein described.

E. On Count V, a judgment declaring that the Department had no right or legal authority to collect a 25% fee from the Plaintiffs and class members, or any other amount over and above the actual cost of collection; a judgment for relief in the form of the equitable remedy of restitution of their moneys from the Department; and an Order requiring Defendant, Allison Ball, in her official capacity as Kentucky State Treasurer, to return all funds taken from the Plaintiffs and class members as herein described.

F. Costs and attorneys' fees in an amount to be determined after the trial of this action.

G. A trial by jury.

H. All other relief to which the Plaintiffs and the class may be entitled.



E. Douglas Richards
E. Douglas Richards, PSC
Chevy Chase Plaza
836 Euclid Avenue, Suite 321
Lexington, KY 40502
859-259-4983
edrichards714@gmail.com
Counsel for Plaintiffs