

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT, IN
AND FOR BROWARD COUNTY,
FLORIDA

CASE NO.:

CRYSTAL CZECH, on behalf of herself and
all other similarly-situated persons,

Plaintiffs,

CLASS REPRESENTATION

v.

NOVA SOUTHEASTERN UNIVERSITY,
INC.,

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Crystal Czech, on behalf of herself and all other similarly-situated persons, sues
Defendant Nova Southeastern University, Inc. (“Nova”), as follows:

INTRODUCTION

1. This is a class action for violations of Florida’s Deceptive and Unfair Practices Act (“FDUTPA”), negligence, and unjust enrichment. Plaintiff is a student at Nova who purchased student-health insurance marketed by Nova on its website from Student Educational Benefit Trust (“SEBT”). SEBT, however, was a sham. It did not process, let alone pay, students’ health insurance claims. It did not answer phone calls from healthcare providers. It was unresponsive to both students’ and healthcare providers’ inquiries regarding their claims. And it was not even a company authorized to engage in the business of insurance, in Florida or its home state of Ohio. On January 22, 2019, SEBT abruptly filed for bankruptcy. Plaintiff and the class members paid

thousands of dollars in premiums for sham insurance and have unpaid healthcare bills from their healthcare providers, many of which are taking collection efforts against the students even though the bills should have been paid by SEBT.

2. Nova marketed the SEBT health insurance with deceptive and misleading statements (which Nova has since removed from its website). For example, Nova represented that SEBT is a “health insurance company,” that the “SEBT plan mirrors the coverage and benefits offered through the NSU Student Health Insurance Plan,” and that SEBT would provide students “with Aetna coverage.”

3. Nova was negligent to partner with SEBT to provide health insurance to its students. Had Nova performed adequate due diligence before contracting with SEBT, it would have learned that SEBT was not even a company authorized or licensed to engage in the business of insurance, let alone an appropriate company for which it should market health insurance to its students.

PARTIES, JURISDICTION, AND VENUE

4. Plaintiff Crystal Czech is a Florida resident and a third-year graduate student at Nova.

5. Defendant Nova is a Florida corporation with its principal place of business in Broward County, Florida.

6. This Court has jurisdiction over this action because the amount in controversy exceeds \$15,000.00, exclusive of interests and costs.

7. Venue is proper in this Court because Defendant Nova’s principal place of business is in Broward County, and because the causes of action asserted herein accrued in the jurisdiction of this Court.

GENERAL FACTUAL ALLEGATIONS

8. Nova requires the overwhelming majority of its students to have health insurance. For those students for whom insurance coverage is mandatory, unless the student submits a waiver form with proof of other insurance by a specified deadline, Nova automatically enrolls the student in the NSU Student Health Insurance Plan and charges the student for the premium. For at least the last several years, the NSU Student Health Insurance Plan has been underwritten by Aetna.

9. Some students, such as certain graduate students, are not required by Nova to have health insurance. Nova deems these students ineligible for the NSU Student Health Insurance Plan. Even though they are full-time Nova students, such students cannot purchase this plan.

10. Such students may still want health insurance, and in any event, they of course were still required under federal law to have health insurance pursuant to the “individual mandate” in the Affordable Care Act.

11. For students ineligible for the NSU Student Health Insurance Plan, Nova offered the “Voluntary Comprehensive Plan,” which it markets on its website.

12. Because the NSU Student Health Insurance Plan did not provide coverage for dependents, students subject to the mandatory requirement could also opt-out and purchase the “Voluntary Comprehensive Plan” to obtain coverage for themselves plus their dependents.

13. In the past, the “voluntary” plan was underwritten by reputable and well-known health insurers, such as Florida Blue and Aetna.

14. Beginning with health insurance for the 2017/2018 academic year, however, Nova decided to partner with SEBT. Previously provided by Aetna, the Voluntary Comprehensive Plan for students deemed by Nova to be ineligible for the NSU Student Health Insurance Plan (and for students with dependents) was now offered only by SEBT, a relatively unknown and much smaller

company. On the other hand, the NSU Student Health Insurance Plan continued to be underwritten by Aetna.

15. When making this change, Nova did not make adequate efforts to determine whether SEBT was a company that was authorized to provide health insurance, whether SEBT was a well-run company, whether SEBT had sufficient reserves to pay claims, or whether SEBT had a history of paying claims (or of not paying claims).

16. In fact, SEBT was a sham. SEBT is an Ohio “trust” that is not an authorized health insurer in Florida or even in its home state of Ohio. Had Nova engaged in adequate due diligence, it would have discovered this based on public records.

17. Upon information and belief, SEBT also had insufficient reserves to cover claims. Nova did not perform adequate due diligence to determine SEBT’s financial condition or claim payment history.

18. On the Student Health Insurance webpage of Nova’s website, Nova stated that its Student Health Insurance Department “assists students with . . . General Voluntary Comprehensive Plan (SEBT) Inquiries.”

19. On the same webpage, Nova stated: “We are dedicated to guiding students in making informed health insurance decisions.”

20. On the same webpage, Nova generally described both the mandatory NSU Student Health Insurance Plan and the Voluntary Comprehensive Plan. In the section of the webpage that marketed the Voluntary Comprehensive Plan, Nova represented that the plan “meets minimum essential coverage requirements set forth under the Affordable Care Act as well as J-1 visa requirements for international students.”

21. On the same webpage, Nova provided a hyperlink to <http://NOVA.My>

Studentbenefit.com, where students could purchase the plan. It also provided a telephone number for SEBT.

22. On the same webpage, Nova provided a hyperlink to its Student Health Insurance FAQs webpage. On this webpage, Nova represented that the “SEBT plan mirrors the coverage and benefits offered through the NSU Student Health Insurance Plan. Both plans are Aetna-affiliated, however, SEBT is the health insurance company providing you with Aetna coverage.” Under this information, Nova again provided the *http://NOVA.My Studentbenefit.com* hyperlink and SEBT telephone number.

23. On the Student Health Insurance FAQs webpage, Nova also stated that a student with dependents could waive out of the NSU Student Health Insurance Plan (which does not cover dependents) “after purchasing an adequate health insurance plan that meets all of the six waiver requirements, such as the Voluntary Comprehensive Plan through SEBT.”

24. Nova students could also access a digital marketing brochure created by Nova and SEBT and which bore the logos of both Nova and SEBT. On a panel of the brochure bearing the Nova logo, the brochure stated: “In order to ensure students have access to adequate healthcare at all times, we strongly encourage students to carry medical health insurance. Voluntary students are eligible and can enroll at *NOVA.mystudentbenefit.com*. The Student Educational Benefit Trust has arranged for you to access a network of local and nationwide providers.” This section of the brochure also touted that the plan “is a comprehensive plan that offers coverage meeting or exceeding the Minimum Essential Coverage requirements as set forth by the Federal Department of Health and Human Services.”

25. The premiums for the Voluntary Comprehensive Plan for the 2017/2018 academic year were as follows:

| | Fall (8/11/17 – 12/31/17) | Spring/Summer (1/1/18 – 8/10/18) | Annual 8/1/17 – 7/31/18) | 3 Month Extension for Graduating Students |
|-------------------------------------|---------------------------------|-------------------------------------|-----------------------------|-------------------------------------------------|
| Undergraduate Student | \$795 | \$795 | \$1,590 | \$632.03 |
| Undergraduate Student + Spouse | \$1,950 | \$1,950 | \$3,900 | \$1,550.25 |
| Undergraduate Student + Children | \$1,305 | \$1,305 | \$2,610 | \$1,037.48 |
| Undergraduate Student + Family | \$4,205 | \$4,205 | \$8,410 | \$3,342.98 |
| Graduate Student | \$1,025 | \$1,025 | \$2,050 | \$814.88 |
| Graduate Student + Spouse | \$2,525 | \$2,525 | \$5,050 | \$2,007.38 |
| Graduate Student + Children | \$1,685 | \$1,685 | \$3,370 | \$1,339.58 |
| Graduate Student + Family | \$5,460 | \$5,460 | \$10,920 | \$4,340.70 |

26. Students could also add annual (no proration option) vision and dental coverage, ranging from \$72 to \$341 for vision coverage and \$240 to \$1,263.36 for dental coverage.

27. Nova's name was at the top of the enrollment forms for SEBT's Voluntary Comprehensive Plan. Nova was aware of this and permitted it.

28. Nova's name and logo was also used on the SEBT webpages on which Nova students could purchase insurance. Nova was aware of this and permitted it.

29. When a Nova student purchased the Voluntary Comprehensive Plan, their health insurance card bore Nova's name and logo. Nova was aware of this and permitted it.

30. The coverage summary was also called the Nova Southeastern University PPO Plan Medical Coverage Summary. Nova was aware of this and permitted it.

31. To enrich itself and steer students to its own facilities, Nova also made arrangements for certain special benefits to apply under the Voluntary Comprehensive Plan when a student sought healthcare services at the Nova's student health center or other Nova-affiliated designated providers. These included benefits such as no deductible, lesser co-insurance than network providers and non-network providers, and no copayments. These additional benefits were

intended to provide Nova students with a financial incentive to use Nova-affiliated healthcare providers.

32. When Nova students with the Nova/SEBT plan obtained healthcare services from healthcare providers, SEBT and its third-party administrators were non-responsive when the providers submitted claims.

33. SEBT and its third-party administrators routinely did not even pick up the phone when providers or students called to inquire about their claims.

34. SEBT and its third-party administrators routinely failed to process, let alone pay, claims from providers in connection with healthcare services provided to Nova students (or dependents) under the Nova/SEBT plan.

35. Plaintiff and the class members have received numerous phone calls and collection letters from their healthcare providers stating that moneys are owed for services that were covered under the Nova/SEBT plan, complaining that the insurer is unresponsive regarding claims, and demanding payment from the students.

36. Plaintiff and the class members have had none or essentially none of their medical bills paid in connection with covered services and have not received any refund of premiums they paid.

37. In early January 2019, SEBT advised its insureds that it was filing for bankruptcy. On January 22, 2019, SEBT actually did file for bankruptcy.

38. Each student who renewed their SEBT health insurance instantly lost coverage, well after open-enrollment for most health insurance.

39. Such students are now dealing with negotiating with healthcare providers, phone calls from providers seeking to collect, and collection letters. These students have been monetarily

damaged both by paying premiums for phony insurance and now being stuck with healthcare bills for services that should have been paid by SEBT.

40. Nova subsequently removed any evidence of its association with SEBT from its website. The webpage for <http://NOVA.MyStudentbenefit.com> no longer exists. Nova has removed the Student Health Insurance FAQs webpage from its website, thus removing its endorsements of SEBT. Nova has also removed every reference to SEBT and the Voluntary Comprehensive Plan from its main Student Health Insurance webpage. Its Student Health Insurance webpage now only describes the mandatory NSU Student Health Insurance Program.

41. Nova was fully aware that SEBT was not paying students' claims and was unresponsive to students and providers regarding such claims. Nevertheless, Nova continued to market the SEBT health insurance to its students and for renewed terms.

42. Nova has also now forced students who lost coverage under the SEBT "Voluntary" Comprehensive Plan to purchase the mandatory Aetna plan (which they were previously deemed ineligible for). Without prior warning, Nova automatically charged each such student's account \$1,329 for the Aetna NSU Student Health Insurance Program—on top of what these students had already paid for coverage under the Nova/SEBT plan.

43. While auto-charging these students for the Aetna NSU Student Health Insurance Program, Nova did not provide any refund or credit for premiums these students, including Plaintiff, had already paid for health insurance for the SEBT/Nova plan—even as to the remainder of the school year for which SEBT insurance was already paid for.

44. Further, while presenting the full auto-charged amount as a "premium" for the Aetna NSU Student Health Insurance Program that would go to Aetna, Nova in fact pocketed a \$70 "administrative fee" for each auto-charged premium.

45. Nova's statements, omissions, and actions would give the reasonable student the net impression that the \$1,329 auto-charge was a premium for Aetna insurance, not the premium plus a hidden profit for Nova.

46. In addition to being deceptive, this practice was further unfair because Nova auto-charged its students at a time when they were in a vulnerable situation, having had their SEBT insurance abruptly terminated well after open-enrollment deadlines

47. Plaintiff is one of many Nova students who purchased the SEBT student-health insurance marketed on Nova's website.

48. Plaintiff purchased the SEBT health (and dental) insurance¹ for the 2018/2019 school year.

49. During the period for which she was supposed to be covered under the Nova/SEBT plan, Plaintiff incurred tens of thousands of dollars in medical and dental bills, which should have been paid by SEBT.

50. SEBT paid nothing toward Plaintiff's medical and dental bills. SEBT was also unresponsive to inquiries from Plaintiff's healthcare providers regarding claims for payment for covered services.

51. Neither Nova nor SEBT has provided Plaintiff with any refund of premiums or assistance (financial or otherwise) with dealing with medical providers seeking payment for healthcare services.

52. Nova did, however, "force-place" the Aetna NSU Student Health Insurance Program on Plaintiff by auto-charging her student account \$1,329. Nova further secretly pocketed a portion of this "premium."

¹ For convenience, all SEBT insurance is referred to herein as "health insurance."

53. Nova's student-health insurance plans are self-funded plans and the Florida Department of Financial Services does not have jurisdiction over these plans.

54. All conditions precedent to this lawsuit have been performed, waived, or otherwise satisfied.

CLASS REPRESENTATION ALLEGATIONS

55. Plaintiff brings this Complaint as a class action pursuant to Florida Rule of Civil Procedure 1.220.

56. Plaintiff re-incorporates the allegations in paragraphs 1 through 54 as if fully set forth herein.

Class Definition

57. Plaintiff seeks to represent the following class (including any applicable subclasses): All Nova students who purchased SEBT health and/or dental insurance within the applicable limitations period (the "Class Period").

58. Excluded from this class are the judge assigned to this case, the judge's staff, and the judge's immediate family members.

59. This class action is brought pursuant to Rule 1.220(b)(2) because Nova has acted or refused to act on grounds generally applicable to all the members of the class, thereby making final injunctive relief or declaratory relief concerning the class appropriate.

60. This class action is also brought pursuant to Rule 1.220(b)(3) because the questions of law or fact common to Plaintiff's claim and the class members' claims predominate over any question of law or fact affecting only individual class members and class representation is superior to other available methods for fairly and efficiently adjudicating the controversy. The likelihood that individual members of the class will prosecute separate actions, and their interest in so doing,

is relatively small due to the extensive time and considerable expense necessary to conduct such litigation, and the fear that Nova will retaliate against students who bring such action.

61. Nova has subjected Plaintiff and the members of the class to the same unfair and deceptive practices and harmed them in the same manner.

A. Numerosity

62. The individual class members are so numerous that joinder of all members in a single action is impracticable. Upon information and belief, hundreds or thousands of Nova students purchased the Nova/SEBT health insurance during the Class Period.

63. While Plaintiff estimates the proposed class numbers in the hundreds or thousands, the exact number of class members, as well as the class members' names and addresses, can be identified from Nova's and/or SEBT's business records.

B. Commonality/Predominance

64. Common questions of law and fact exist as to Plaintiff's and the class members' claims. These common questions predominate over any questions solely affecting individual class members, including, but not limited to, the following:

- a. Whether Nova made deceptive or misleading statements regarding the Nova/SEBT student health insurance;
- b. Whether the omissions, misrepresentations, or misleading statements made by Nova would deceive the reasonable consumer;
- c. Whether Nova received undisclosed kickbacks, commissions, remuneration, or fees from the sale of SEBT student-health insurance;
- d. Whether Nova's practice of auto-charging students for premiums is an unfair practice under FDUTPA;

- e. Whether Nova deceptively represented auto-charged premiums as a pass through charge;
- f. Whether Nova breached a duty to engage in due diligence with respect to the health insurers it partnered with to provide its students with health insurance;
- g. Whether Nova was negligent in partnering with SEBT to provide its students with health insurance;
- h. Whether Nova was unjustly enriched by pocketing a portion of the auto-charged premiums;
- i. Whether Nova was unjustly enriched by the sale or marketing of the Nova/SEBT health insurance to Nova's students at the expense of the class; and
- j. Whether Nova's conduct has caused injury to Plaintiff and the class members.

C. Typicality

65. Plaintiff's claims are typical of the putative class members' claims because of the similarity and uniformity of Nova's conduct. Plaintiff, like all class members, was damaged through her payment of money for SEBT student-health insurance that Nova presented as being provided by a "health insurance company" and as "mirroring" Aetna coverage.

66. Like all class members, Plaintiff effectively did not have health insurance because her claims were not processed or paid and SEBT was not an authorized insurance company.

67. Plaintiff, like all class members, was also auto-charged by Nova for new health insurance after SEBT filed for bankruptcy.

68. Each class member has sustained, and will continue to sustain, damages in the same manner as Plaintiff as a result of Nova's wrongful and/or negligent conduct. These damages include premiums paid for sham health insurance and unpaid medical bills.

D. Adequacy

69. Plaintiff will fairly and adequately protect and represent the interest of each member of the class because she has suffered the same wrongs as the class members.

70. Plaintiff is fully cognizant of her responsibilities as class representative and has retained León Cosgrove, LLP to prosecute this case. León Cosgrove, LLP is experienced in complex class action litigation, including litigation related to unfair and deceptive trade practices, and has the financial and legal resources to meet the costs of and understand the legal issues associated with this type of litigation.

71. Class action treatment is superior to the alternatives, if any, for the fair and efficient adjudication of the controversy alleged herein because such treatment will permit a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, and expense that numerous individual actions would engender.

72. This action will be prosecuted in a fashion to ensure the Court's able management of this case as a class action on behalf of the class. Plaintiff knows of no difficulty likely to be encountered in the management of this action that would preclude its maintenance as a class action.

**COUNT I
VIOLATION OF FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT**

73. Plaintiff re-alleges paragraphs 1 through 72 above as if fully set forth herein.

74. This count is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA").

75. At all times material, Nova conducted trade and commerce within the meaning of Section 501.203, Fla. Stat.

76. Nova has engaged in deceptive, misleading, and/or unfair practices through the

conduct alleged above.

77. The misrepresentations, misleading statements, and concealment and omissions of material facts, alleged in the preceding paragraphs occurred in connection with Nova's trade and commerce in Florida.

78. Nova's unfair and deceptive acts and practices violate FDUTPA, Section 501.201 and 501.211, Fla. Stat.

79. As a direct and proximate result of Nova's FDUTPA violations, Plaintiff and the class have been damaged in an amount to be proven at trial.

80. Plaintiff and the class are entitled to actual damages, declaratory and injunctive relief, attorneys' fees and costs, and all other remedies available under FDUTPA.

COUNT II NEGLIGENCE

81. Plaintiff re-alleges paragraphs 1 through 72 above as if fully set forth herein.

82. This is a count for negligence.

83. Nova undertook a duty to provide its students with access to adequate and valid health insurance.

84. Nova undertook a duty of care to ensure that the companies it partnered with to provide its students with health insurance were actual authorized health insurance companies, were solvent, maintained sufficient reserves to pay claims, and actually were willing and able to pay claims for covered healthcare services.

85. Nova owed these duties of care to its students.

86. Nova failed to exercise reasonable care in its selection of SEBT to provide health insurance to its students and breached its duties of care to its students by failing to perform adequate due diligence on SEBT and by partnering with a company that was not an authorized

health insurance company, that was not an insurance company at all, and that was unwilling or unable to pay claims for covered services.

87. As a direct and proximate cause of Nova's negligence, Plaintiff and the class have been damaged, including by paying premiums for sham health insurance and owing medical debt for healthcare services that should have been covered.

COUNT III UNJUST ENRICHMENT

88. Plaintiff re-alleges paragraphs 1 through 72 as if fully set forth herein.

89. This is a count for unjust enrichment.

90. Plaintiff and each member of the class conferred direct benefits on Nova through their payment of auto-charged premiums, allowing Nova to enrich itself to the detriment of the class.

91. Plaintiff and each member of the class also conferred direct benefits on Nova through their payment of auto-charged premiums of which Nova retained a portion, allowing Nova to enrich itself to the detriment of the class.

92. Nova appreciated, accepted, and retained these benefits.

93. Under the circumstances, it would be unjust and inequitable to allow Nova to retain these benefits.

94. Plaintiff and the class suffered damages as a result of Defendant's unjust enrichment.

PRAYER FOR RELIEF

Named plaintiff and the plaintiff class request the following relief:

- a. Certification of the class;
- b. A jury trial and judgment against Nova;

- c. The costs of suit, including reasonable attorney's fees, in accordance with FDUTPA and other applicable law;
- d. General, actual, and compensatory damages in an amount to be determined at trial;
- e. Restitution by Nova of all insurance premiums paid by Plaintiff and members of the class, as a result of the wrongs alleged herein, in an amount to be determined at trial;
- f. Payment of all unpaid claims for healthcare and dental services on behalf of Plaintiff and the members of the class;
- g. Injunctive and declaratory relief preventing Nova from force-placing health insurance on its students and auto-charging students for health insurance;
- h. Injunctive and declaratory relief preventing Nova from pocketing a portion of charges presented as premiums or pass-through charges;
- i. Pre-judgment and post-judgment interest at the maximum rate permitted by applicable law; and
- j. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as to all claims so triable.

Dated: September 23, 2019.

Respectfully submitted,

/s/ Jeremy L. Kahn

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