

STATE OF NORTH CAROLINA

File No.

19-CVS-_____

Wake

County

FILED

In The General Court Of Justice
 District Superior Court Division

Name And Address Of Plaintiff 1
Emily Cram

2019 DEC 31 PM 1:03

WAKE COUNTY, N.C.

GENERAL
CIVIL ACTION COVER SHEET

Name And Address Of Plaintiff 2

INITIAL FILING SUBSEQUENT FILING

Rule 5(b) of the General Rules of Practice for the Superior and District Courts

VERSUS

Name And Address Of Defendant 1
Raleigh Radiology, LLC d/b/a Raleigh Radiology Blue Ridge
c/o Satish Mathan, Registered Agent
Rexview Medical Plaza, 3200 Blue Ridge Rd., Ste. 100
Raleigh, NC 27612-8087

Name And Address Of Attorney Or Party, if Not Represented
(complete for initial appearance or change of address)

David D. Larson, Jr.
410 N. Boylan Ave., Ste. 100
Raleigh, NC 27603

Summons Submitted

Yes No

Telephone No.

(919) 245-3116

Cellular Telephone No.

Name And Address Of Defendant 2

NC Attorney Bar No.

25659

Attorney Email Address

dlarson@paynterlaw.com

Initial Appearance in Case Change of Address

Name Of Firm

The Paynter Law Firm PLLC

Fax No.

(866) 734-0622

Summons Submitted

Yes No

Counsel For

All Plaintiffs All Defendants Only: (list party(ies) represented)

Jury Demanded In Pleading Complex Litigation Stipulate to Arbitration

TYPE OF PLEADING

(check all that apply)

- Amend (AMND)
- Amended Answer/Reply (AMND-Response)
- Amended Complaint (AMND)
- Assess Costs (COST)
- Answer/Reply (ANSW-Response) (see Note)
- Change Venue (CHVN)
- Complaint (COMP)
- Confession Of Judgment (CNFJ)
- Consent Order (CONS)
- Consolidate (CNSL)
- Contempt (CNTP)
- Continue (CNTN)
- Compel (CMPL)
- Counterclaim (CTCL) Assess Court Costs
- Crossclaim (list on back) (CRSS) Assess Court Costs
- Dismiss (DISM) Assess Court Costs
- Exempt/Waive Mediation (EXMD)
- Extend Statute Of Limitations, Rule 9 (ESOL)
- Extend Time For Complaint (EXCO)
- Failure To Join Necessary Party (FJNP)

- Failure To State A Claim (FASC)
- Implementation Of Wage Withholding In Non-IV-D Cases (OTHR)
- Improper Venue/Division (IMVN)
- Including Attorney's Fees (ATTY)
- Intervene (INTR)
- Interplead (OTHR)
- Lack Of Jurisdiction (Person) (LJPN)
- Lack Of Jurisdiction (Subject Matter) (LJSM)
- Modification Of Child Support In IV-D Actions (MSUP)
- Notice Of Dismissal With Or Without Prejudice (VOLD)
- Petition To Sue As Indigent (OTHR)
- Rule 12 Motion In Lieu Of Answer (MDLA)
- Sanctions (SANC)
- Set Aside (OTHR)
- Show Cause (SHOW)
- Transfer (TRFR)
- Third Party Complaint (list Third Party Defendants on back) (TPCL)
- Vacate/Modify Judgment (VCMD)
- Withdraw As Counsel (WDCN)
- Other (specify and list each separately)

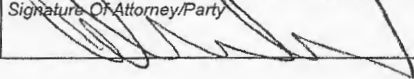
NOTE: All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must include either a General Civil (AOC-CV-751), Motion (AOC-CV-752), or Court Action (AOC-CV-753) cover sheet.

(Over)

CLAIMS FOR RELIEF

- | | | |
|--|--|--|
| <input type="checkbox"/> Administrative Appeal (ADMA) | <input type="checkbox"/> Limited Driving Privilege - Out-Of-State Convictions (PLDP) | <input type="checkbox"/> Product Liability (PROD) |
| <input type="checkbox"/> Appointment Of Receiver (APRC) | <input type="checkbox"/> Medical Malpractice (MDML) | <input type="checkbox"/> Real Property (RLPR) |
| <input type="checkbox"/> Attachment/Garnishment (ATTC) | <input type="checkbox"/> Minor Settlement (MSTL) | <input type="checkbox"/> Specific Performance (SPPR) |
| <input type="checkbox"/> Claim And Delivery (CLMD) | <input type="checkbox"/> Money Owed (MNYO) | <input checked="" type="checkbox"/> Other (specify and list each separately) |
| <input type="checkbox"/> Collection On Account (ACCT) | <input type="checkbox"/> Negligence - Motor Vehicle (MVNG) | Request Class Certification |
| <input type="checkbox"/> Condemnation (CNDM) | <input type="checkbox"/> Negligence - Other (NEGO) | |
| <input checked="" type="checkbox"/> Contract (CNTR) | <input type="checkbox"/> Motor Vehicle Lien G.S. Chapter 44A (MVLN) | |
| <input type="checkbox"/> Discovery Scheduling Order (DSCH) | <input type="checkbox"/> Possession Of Personal Property (POPP) | |
| <input type="checkbox"/> Injunction (INJU) | | |

Date 12/31/19

Signature Of Attorney/Party 

FEES IN G.S. 7A-308 APPLY

- Assert Right Of Access (ARAS)
 Substitution Of Trustee (Judicial Foreclosure) (RSOT)
 Supplemental Procedures (SUPR)

PRO HAC VICE FEES APPLY

Motion For Out-Of-State Attorney To Appear In NC Courts In A Civil Or Criminal Matter (Out-Of-State Attorney/Pro Hac Vice Fee)

No.	<input type="checkbox"/> Additional Plaintiff(s)

No.	<input type="checkbox"/> Additional Defendant(s)	<input type="checkbox"/> Third Party Defendant(s)	Summons Submitted
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No

Plaintiff(s) Against Whom Counterclaim Asserted

Defendant(s) Against Whom Crossclaim Asserted

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

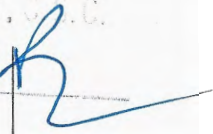
COUNTY OF WAKE

SUPERIOR COURT DIVISION

FILE NO. 19-CVS-_____

2019 DEC 31 PM 1:03

EMILY CRAM, on behalf of herself
and all others similarly situated,



PLAINTIFFS,

v.

CLASS ACTION COMPLAINT AND
JURY DEMAND

RALEIGH RADIOLOGY, LLC
d/b/a RALEIGH RADIOLOGY
BLUE RIDGE,

DEFENDANT.

Plaintiff Emily Cram, on behalf of herself and all others similarly situated, by and through undersigned counsel, states and alleges as follows:

I. INTRODUCTION

1. Defendant Raleigh Radiology, LLC d/b/a Raleigh Radiology Blue Ridge (“Raleigh Radiology”) is one of the largest mammogram service providers in the Raleigh area. Patients rely on mammograms to detect breast cancer at the earliest possible time. A failure to detect breast cancer early can have catastrophic results.

2. Patients contract with Raleigh Radiology to provide scientifically reliable mammograms that meet Food and Drug Administration (“FDA”) and American College of Radiology (“ACR”) accreditation standards.

3. On its website,¹ Raleigh Radiology promises patients that it uses the “most advanced mammography technology available” and that its “digital mammography screening” is the “best tool available to help detect breast cancer in its earliest stages.” Raleigh Radiology promises patients that “all of our offices are accredited by the American College of Radiology and certified by the FDA.”

¹ <https://www.raleighrad.com/mammogram-schedule/> (last accessed December 30, 2019)

4. In fact, with respect to its Blue Ridge Road office, these assertions are and were incorrect. During a recent review, the ACR found substandard images for mammograms performed at the Blue Ridge Road office between November 7, 2017 and November 6, 2019 and denied the office accreditation.

5. On or about December 11, 2019, Raleigh Radiology informed affected patients, including Plaintiff Emily Cram, that the FDA suspended Raleigh Radiology's Blue Ridge Road office from performing mammography services as a result of the ACR review.

6. In a follow up certified letter mailed later in December 2019, Raleigh Radiology specifically advised patients that prior mammograms likely would need, at minimum, to be "reviewed" again and "possibly repeated." Patients were advised to talk with their referring physicians "as soon as possible." Despite acknowledging that its mammography services failed ACR and FDA standards, Raleigh Radiology did not offer to refund patients for breast cancer screenings now known to be worthless.

7. Plaintiff brings this action to address Defendant's failure to provide the promised breast cancer screenings. Plaintiff, on behalf of herself and other patients who had mammograms performed at Raleigh Radiology's Blue Ridge Road office between November 7, 2017 and November 6, 2019, seeks damages for breach of contract.

II. PARTIES

8. Plaintiff Emily Cram is a resident of Wake County, North Carolina and was a resident of Wake County, North Carolina on March 27, 2018, May 23, 2019, and June 5, 2019 when she had mammograms performed at Raleigh Radiology.

9. Defendant Raleigh Radiology, LLC d/b/a Raleigh Radiology Blue Ridge ("Raleigh Radiology"), a limited liability corporation incorporated in North Carolina with its principal place of business in Wake County, performs mammography and other radiological services in North Carolina.

III. JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this action pursuant to N.C. Gen. Stat. § 7A-240 and N.C. Gen. Stat. § 7A-243 because the amount in controversy exceeds \$25,000.

11. This Court has personal jurisdiction over Defendant Raleigh Radiology pursuant to N.C. Gen. Stat. § 1-75.4(1)(c) because it is a domestic corporation and N.C. Gen. Stat. § 1-75.4(5)(b) because this action arises out of services actually performed by Defendant for Plaintiff and class members within the State at its office located at 3200 Blue Ridge Road, Raleigh, North Carolina.

12. Venue is proper in Wake County pursuant to N.C. Gen. Stat. §§ 1-79 and 1-82 because Plaintiff resides in this county, and Defendant maintains its principal place of business in this county.

IV. FACTS

A. Defendant's Blue Ridge Road Office Produced Deficient Mammogram Images, Lost Its Accreditation, and Was Suspended by the FDA.

13. Defendant Raleigh Radiology performs mammograms and other radiological services at several offices in North Carolina, including an office located at 3200 Blue Ridge Road, Raleigh, North Carolina ("Blue Ridge Road office").

14. Raleigh Radiology promises its patients that it is "committed to providing patients with the most advanced mammography technology available," and "Digital Mammography with CAD (computer aided detection) is the best tool available to help detect breast cancer in its earliest stages."²

15. Raleigh Radiology also assures patients that *all* of its offices are accredited by the American College of Radiology ("ACR") and certified by the FDA.³ This statement is not true for the Blue Ridge Road office.

² <https://www.raleighrad.com/mammogram-schedule/> (last visited December 22, 2019).

³ <https://www.raleighrad.com/mammogram-schedule/> (last visited December 22, 2019).

16. As part of the mammography accreditation process, the ACR recently reviewed a sample of mammogram images produced by the Blue Ridge Road office between November 7, 2017 and November 6, 2019.

17. The ACR found substandard and deficient mammogram images during its review and denied accreditation to the Blue Ridge Road office.

18. Following ACR's accreditation denial, the FDA suspended all mammography services at the Blue Ridge Road office.

19. On or about December 11, 2019, Laura O. Thomas, M.D., radiologist and Chair of Breast Imaging for Raleigh Radiology, sent a letter to affected mammogram patients, informing them of the ACR's review and the FDA's suspension.

20. The letter states that Defendant was "directed to stop performing mammography at the Blue Ridge facility until [Defendant] complete[s] a Corrective Action plan, formally notif[ies] [its] patients, and achieve[s] reinstatement of [its] Mammography Accreditation."

21. The letter also states that that neither the FDA nor the ACR identified any images where cancer or disease was "overlooked," but admits that the ACR's review was "limited to a very small sample of mammography cases" and "related only to the technical quality of the mammography images generated."

22. The letter claims that the "majority" of cases reviewed by the ACR were "acceptable" but does not tell the patient (1) whether her mammogram images were part of the review; or (2) whether her mammogram images were acceptable. To the contrary, it advises patients to consult with their referring physician at their own expense and that it may be necessary to re-review or repeat mammograms taken between November 7, 2017 and November 6, 2019.

23. Later in December 2019, Raleigh Radiology followed up with a more detailed FDA-mandated letter, sent via certified mail. In that letter, Raleigh Radiology acknowledged that breast cancer screening services that it provided (and billed for) during the relevant period were essentially worthless. Specifically, it instructed patients who had received a *subsequent*

mammograph at a “MQSA-certified facility” to ignore any previous mammograms from the Blue Ridge Road office and “follow the recommendation from that subsequent mammogram.”⁴ For patients who had not had a subsequent mammogram at a different facility, the letter instructed them to talk to their referring physician “as soon as possible.” The letter noted that, at minimum, the prior mammograms would need to be re-reviewed and, in many cases, would need to be “repeated” at another “MQSA-certified facility.”

24. The second December 2019 letter also noted that Raleigh Radiology would be sending a letter to patients’ referring physicians.

25. Plaintiff’s treating physician did receive a letter; however, on information and belief, it appears that Raleigh Radiology accidentally sent referring physicians the template used to generate the FDA-mandated letters to Plaintiff and class members. That is, on information and belief, referring physicians received a letter that was identical to the letter sent to plaintiff and class members except none of the fields were populated. Therefore, the letter conveyed no patient specific information to the referring physician.

B. Injury to Plaintiff

26. Plaintiff’s experience is illustrative of Defendant’s conduct and typical of members of the putative class.

27. On March 27, 2018, Plaintiff Emily Cram had a routine digital mammogram performed at the Blue Ridge Road office.

28. On May 23, 2019, Plaintiff had a routine digital mammogram performed at the Blue Ridge Road office.

29. Plaintiff’s May 23, 2019 mammogram showed an architectural distortion on the right side, and Plaintiff was asked to have a repeat mammogram, which she did on June 5, 2019 and received a normal result.

⁴ MQSA refers to the Mammography Quality Standards Act of 1992.

30. On December 15, 2019, Plaintiff received Dr. Thomas's letter about the ACR's finding and the FDA's suspension.

31. Plaintiff had a total of three mammograms during the review period the ACR found deficient images; however, neither Raleigh Radiology's initial letter or the follow-up FDA-mandated letter told her whether her images were reviewed by the ACR or deficient. Therefore, despite having paid for breast cancer screenings that meet FDA quality standards and ACR accreditation standards, Plaintiff now has no way of knowing whether, in fact, her prior mammograms actually detected any clinically significant abnormalities.

32. Raleigh Radiology did not offer Plaintiff a refund for the mammograms it performed.

V. CLASS ALLEGATIONS

33. This action has been brought, and may be properly maintained, under Rule 23 of the North Carolina Rules of Civil Procedure.

34. Plaintiff brings this action as a Class Action on behalf of herself and all others similarly situated as members of a Statewide Class, defined as follows:

All patients who had a mammogram performed at Raleigh Radiology – Blue Ridge, located at 3200 Blue Ridge Road, Raleigh, North Carolina, between November 7, 2017 and November 6, 2019.

35. Plaintiff reserves the right to amend the class definition if information received during discovery and further investigation requires it.

36. Excluded from the Classes are Defendant; any entity in which Defendant has a controlling interest; any of the officers, directors, or employees of Defendant; and the legal representatives, heirs, successors and assigns of Defendant.

37. The members of the Class are so numerous and widely dispersed that joinder of them in one action is impractical. On information and belief, Defendant performs hundreds or even thousands of mammograms every year. While the exact number and identities of class

members are unknown at this time, and can be ascertained only through appropriate discovery, Plaintiff alleges that the class consists of at least hundreds of members.

38. The proposed class definition is definite enough so that it is administratively feasible for the Court to ascertain whether an individual is a class member. Identifying class members is a manageable process that does not require any individual factual inquiry, as class members can be ascertained by reference to objective criteria, such as records in the possession of class members and Defendant.

39. The named Plaintiff and unnamed members of the class each have an interest in the same issues of law or of fact, and those issues predominate over issues affecting only individual class members, including but not limited to:

- a. Whether Defendant breached its contract with Plaintiff and class members by performing mammograms without being in compliance with FDA quality standards and ACR accreditation requirements;
- b. Whether Defendant breached its contract with Plaintiff and class members by providing unreliable breast cancer screenings;
- c. Whether Plaintiff and class members are entitled to a full refund for breast cancer screenings;
- d. Whether Plaintiff and class members are entitled to damages for the expense of any re-review or repeat of any mammogram taken at the Blue Ridge Road office between November 7, 2017 and November 6, 2019.

40. Plaintiff's claims are typical of the class she seeks to represent. The claims of the Plaintiff and the class arise out of the same course of conduct and same legal theories. Plaintiff challenges Defendant's practices and course of conduct with respect to the class as a whole.

41. Plaintiff is an adequate representative of the Class because Plaintiff's interests do not conflict with the interests of Class members Plaintiff seeks to represent. Plaintiff has retained counsel competent and experienced in class action litigation who intend to vigorously prosecute this action.

42. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all the class members is impracticable.

43. Furthermore, no individual class member can justify the commitment of the large financial resources to vigorously prosecute a lawsuit against Defendant, and the adjudication of this controversy through a class action will avoid the possibility of inconsistent and potentially conflicting adjudication of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

VI. CLAIM
COUNT I
BREACH OF CONTRACT

44. Plaintiff realleges and incorporates by reference all preceding paragraphs of the Complaint as if fully set forth herein.

45. Between November 7, 2017 and November 6, 2019, Plaintiff and class members entered valid contracts with Defendant to screen for breast cancer.

46. Plaintiff and class members paid money for their breast cancer screenings.

47. Defendant breached its contracts with Plaintiff and class members by providing breast cancer screenings, the results of which it now acknowledges may or may not have been “wrong” and were performed at a facility that was not in compliance with FDA quality standards and ACR accreditation standards. As a result, Plaintiff and class members have no idea whether, in fact, previous mammograms detected any abnormalities of clinical significance. As a result, Plaintiff and class members will be forced to undertake costly re-evaluations of the previously purchased mammograms.

48. To date, Defendant has not refunded any money that Plaintiff and class members paid for breast cancer screenings despite the fact that it has acknowledged that this screening did not provide Plaintiff and class members with any useful information as a result of Raleigh Radiology’s failure to comply with FDA quality standards and ACR accreditation standards.

49. Through this action, Plaintiff and class members seek to recoup all monies paid for breast cancer screenings provided from November 7, 2017 to November 6, 2019. In addition, Plaintiff and class members seek any costs associated with any necessary re-review or repeating of prior mammograms.

50. Plaintiff and class members do not seek compensation in this action for personal injury or wrongful death; however, Plaintiff and class members reserve the right to bring such claims in this action or in separate actions.

PRAYER FOR RELIEF

Plaintiff, individually and for members of the class, respectfully requests that the Court enter judgment in their favor and against Defendant as follows:

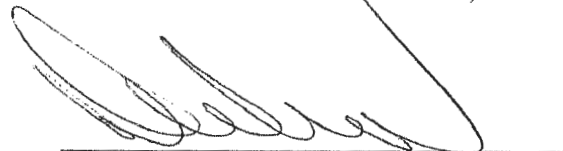
- a. Certification of the proposed class, including appointment of Plaintiff's counsel as class counsel and Plaintiff as class representative;
- b. Costs, restitution, damages, and disgorgement in an amount to be determined at trial;
- c. An order requiring Defendant to pay both pre- and post-judgment interest on any amount awarded;
- d. An award of costs and attorneys' fees; and
- e. Such other or further relief as may be appropriate.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury of all the claims asserted in this Complaint.

Dated December 31, 2019.

THE PAYNTER LAW FIRM, PLLC

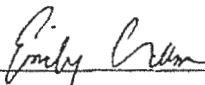


Stuart M. Paynter
North Carolina State Bar # 42379
David D. Larson, Jr.
North Carolina State Bar # 25659

Sara C. Willingham
North Carolina State Bar # 45661
410 N. Boylan Avenue, Suite 100
Raleigh, North Carolina 27603
Telephone: (919) 245-3116
Facsimile: (866) 734-0622
E-mail: stuart@paynterlaw.com
dlarson@paynterlaw.com
swillingham@paynterlaw.com

VERIFICATION

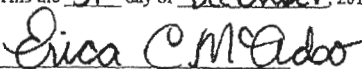
EMILY CRAM, being duly sworn, says that she has read or had read to her the foregoing and that the same is true of her own knowledge except as to those matters and things therein stated upon information and belief, and as to those, she verily believes them to be true.



Emily Cram

State of North Carolina
County of Wake

Sworn to and subscribed before me
This the 31 day of December, 2019.



Notary Public

My commission expires: 2-4-20

