

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

**JENNIFER FORD, ERIC BEARD, and
BRIAN OTTERS**, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

**VETERANS GUARDIAN VA CLAIM
CONSULTING, LLC,**

Defendant.

Case No. 1:23-cv-756-CCE-LPA

CLASS ACTION

JURY TRIAL DEMAND

**DEFENDANT'S SUPPLEMENTAL AUTHORITIES ARE
INAPPOSITE AND DO NOT CONTROL**

Defendant argues for a clean line between contract (*ex contractu*) and tort (*ex delicto*) claims. But the line is blurred when tort claims are “closely related” to the contract. *Volvo Group v. Forja de Monterrey S.A. de C.V.*, 2019 WL 4919632, at *5 (M.D.N.C. Oct. 4, 2019).

Izzy Air, LLC v. Triad Aviation, Inc., 877 S.E.2d 65, 69 (N.C.Ct. App. 2022): the choice-of-law clause only applied to the warranty. The court applied the “most significant relationship test” and *lex loci* analysis to the UDTPA claim. *Id.* at 71.

Truliant Fed. Cred. Union, 2025 WL 1040815, at *11 (M.D.N.C. Apr. 8, 2025): the court applied a choice-of-law clause to contract claims but ordinary choice rules to a deceptive prong-UDTPA claim. UDTPA claims involving “deceptive” practices are akin to traditional torts of fraud, requiring reliance. *Bumpers v. Com. Bank of N. Va.*, 367 N.C.

81, 747 S.E.2d 220, 227 (2013). Plaintiffs' UDTPA claim is under the unfairness prong and closely related to the contract.

Frazier v. Titlemax, 2026 WL 1235226, at *5 (N.C. Ct. App. May 6, 2026): This involved the "severely limited review" of an arbitration award. The court considered whether the arbitrators exceeded their powers under the FAA, but did not evaluate whether the choice-of-law analysis was correct. *Id.* at *5.

Mosteller Mansion v. Mactec, 2008 WL 2096769, at *2 (N.C. Ct. App. May 20, 2008): the court applied Georgia law to contract claims and North Carolina law to tort claims because that was "where the tort was committed." *Id.* No analysis of a UDTPA or NCDCA claim was involved.

These cases are distinguishable because none involve a three-part fully-integrated provision like here, and none apply the provision to UDTPA unfairness or NCDCA claims where unlawful conduct occurred in North Carolina.

Date: June 29, 2026

Respectfully submitted,

VARNELL & WARWICK P.A.

/s/ Brian W. Warwick

Brian W. Warwick; FBN: 0605573*

Janet R. Varnell; FBN: 0071072*

Christopher J. Brochu; FBN: 1013897*

Pamela G. Levinson; FBN: 538345*

400 N Ashley Drive, Suite 1900

Tampa, FL 33602

Telephone: (352) 753-8600

Facsimile: (352) 504-3301

bwarwick@vandwlaw.com

jvarnell@vandwlaw.com

cbrochu@vandwlaw.com

plevinson@vandwlaw.com

BERGER MONTAGUE PC

/s/ Jeffrey Osterwise
Jeff Osterwise; NC Bar No.: 39272
Shanon J. Carson*
Radha Nagamani Raghavan*
1818 Market Street
Philadelphia, PA 191013
Telephone: (215) 875-4656
Facsimile: (215) 875-4604
josterwise@bm.net
scarson@bm.net
rraghavan@bm.net

*Pro Hac Vice

Appointed Class Counsel for Plaintiffs and the Class

Certificate of Word Count

I hereby certify, pursuant to Local Rule 7.3(d)(1) of the United States District Court for the Middle District of North Carolina, that this Brief complies with the Court's June 25, 2026 Text Order imposing a 300-word limit. According to the word-processing system used to prepare this Brief, it contains no more than 300 words.

Certificate of Service

I hereby certify that on June 29, 2026, a copy of the foregoing document was filed using CM/ECF which will serve an electronic copy on all counsel of record.

/s/ Brian W. Warwick
Brian W. Warwick