

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

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.

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

DEFENDANT’S SUPPLEMENTAL BRIEF

Defendant Veterans Guardian VA Claim Consulting, LLC (“Veterans Guardian”) submits this supplemental brief pursuant to the Court’s June 10, 2026 Order (ECF No. 177). The Consulting Service Agreement (“CSA”) contains a generic choice-of-law clause that (in contrast to its broader forum-selection clause) governs only the agreement itself. Courts in North Carolina construe such clauses narrowly to cover only contractual claims. Plaintiffs’ Unfair and Deceptive Trade Practices Act (“UDTPA”) and Debt Collection Act (“DCA”) claims, however, are predicated on statutory liability that is “*ex delicto* [(from a wrong)], not *ex contractu* [(from a contract)].” *ITCO Corp. v. Michelin Tire Corp.*, 722 F.2d 42, 49 n.11 (4th Cir. 1983). So North Carolina’s default choice-of-law principles, rather than the CSA’s choice-of-law provision, should dictate which state’s substantive law applies to this case.

The CSA's Choice-of-Law Provision Does Not Apply to Plaintiffs' Statutory Claims.

Veterans Guardian shares the Court's understanding (ECF No. 177 at 1) that "the forum State's choice of law rules" govern whether a choice-of-law provision applies to Plaintiffs' claims. *See Guzman v. Diamond Candles, LLC*, No. 1:15CV422, 2016 WL 5679451, at *1 (M.D.N.C. Sept. 30, 2016). Accordingly, this Court must consider how the North Carolina Supreme Court would interpret the applicability of the CSA's choice-of-law clause. *See Volvo Grp. N. Am., LLC v. Forja de Monterrey S.A. de C.V.*, No. 1:16-CV-114, 2019 WL 4919632, at *3 (M.D.N.C. Oct. 4, 2019). That inquiry assesses both "the language of the choice-of-law provision" and "the nature of the claims." *Brimer v. MDElite Laser & Aesthetic, LLC*, 770 F. Supp. 3d 876, 888 (E.D.N.C. 2025). Here, the language of the CSA's choice-of-law provision makes plain that it covers only disputes over the agreement itself, and Plaintiffs' statutory claims do not fit within that scope.

A. The CSA's Narrow Choice-of-Law Provision Covers Only Contractual Claims.

The CSA's choice-of-law provision is narrow: "This agreement is entered into and shall be governed by the laws of the State of North Carolina" ECF No. 106-3 ¶ 8 (Ford CSA). By its own terms, the provision governs only the "agreement" itself—*i.e.*, its "construction, interpretation, or enforceability." *ITCO Corp.*, 722 F.2d at 49 n.11. That clause does not reach claims for which "[t]he liability alleged is predicated, rather, upon actions separate and distinct from the [relevant] Agreement itself." *Id.*

Indeed, language providing that a contract will be "governed by" or "subject to" a particular state's law reflects a classically generic choice-of-law provision. Tanya

Monestier, *The Scope of Generic Choice of Law Clauses*, 56 U.C. Davis L. Rev. 959, 961 (2023); *see also, e.g., Frazier v. Titlemax of Va., Inc.*, No. COA25-703, 2026 WL 1235226, at *4 (N.C. Ct. App. May 6, 2026) (“The Loan Agreements’ choice-of-law clause is generic; that is, it simply provides that the contract shall be ‘governed by’ the law of a particular state without specifically providing that the clause governs ‘[a]ny and all claims arising from or relating to’ the Agreements.” (citing Monestier, 56 U.C. Davis L. Rev. at 968–72)). North Carolina courts hold that such generic choice-of-law clauses do not cover non-contractual claims. *See, e.g., Izzy Air, LLC v. Triad Aviation, Inc.*, 877 S.E.2d 65, 69 (N.C. Ct. App. 2022) (holding that clause applying North Carolina law to disputes “on this Warranty” governed warranty disputes only and was not sufficiently broad to encompass UDTPA claim); *Truliant Fed. Credit Union v. Bethpage Fed. Credit Union*, No. 1:23CV556, 2025 WL 1040815, at *4 (M.D.N.C. Apr. 8, 2025) (holding that contractual choice-of-law provision did not apply to plaintiff’s negligent misrepresentation claim and UDTPA claim, even while choice-of-law provision governed several related “Breach” claims); *Mosteller Mansion, LLC v. Mactec Eng’g & Consulting of Ga., Inc.*, No. COA07-664, 2008 WL 2096769, at *3–4 (N.C. Ct. App. May 20, 2008) (applying choice-of-law provision to contract claim but holding that other claims are governed by “law of the state where [the] tort was committed” (citing *Gbye v. Gbye*, 503 S.E.2d 434 (N.C. Ct. App. 1998))).

North Carolina thus follows a “canon against non-contractual claims”—under which a generic clause is presumed not to reach non-contractual claims—rather than a “canon in favor of non-contractual claims” that some other states, like California, apply.

John F. Coyle, *The Canons of Construction for Choice-of-Law Clauses*, 92 Wash. L. Rev. 631, 669–70 (2017); *see also* Monestier, 56 U.C. Davis L. Rev. at 982 (arguing the “narrow approach remains faithful to the actual words of the parties and preserves the distinction between specific or nexus-based choice of law clauses and generic choice of law clauses”). Courts applying the canon against non-contractual claims decline to extend a choice-of-law clause to consumer-protection claims (even if related to the contract) absent some specific indication in the plain language of the provision that it covers such claims. *See* Coyle, 92 Wash. L. Rev. at 670 (citing cases). No such indication appears in the CSA’s choice-of-law clause to overcome that presumption here.

To the contrary, the CSA’s broader forum-selection clause confirms that the adjacent choice-of-law clause does not extend beyond disputes over the agreement itself. The CSA’s forum-selection clause applies to “any dispute arising out of or relating to” the CSA. ECF No. 106-3 ¶ 8 (“said states courts shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this agreement”). The choice-of-law clause, by contrast, is much narrower: It applies only to “[t]his agreement” and omits the broader “arising out of” and “relating to” language that subsequently appears with respect to forum selection. *See id.* That omission matters: North Carolina courts infer contractual intent and understanding from clear language, *Walton v. City of Raleigh*, 467 S.E.2d 410, 411 (N.C. 1996), and give deliberately selected words their plain meaning, *Value Health Sols., Inc. v. Pharm. Rsch. Assocs.*, 891 S.E.2d 100, 114 (N.C. 2023).

Plaintiffs therefore misread the CSA when relying on the forum-selection clause to argue that all disputes “arising out of or relating to” the CSA are governed by North

Carolina’s substantive law. ECF No. 110 at 21 (citing ECF No. 52-1 ¶ 8); *see also id.* at 4. That interpretation conflates distinct contractual clauses serving different purposes. *See Cable Tel Servs., Inc. v. Overland Contracting, Inc.*, 574 S.E.2d 31, 33 (N.C. Ct. App. 2002) (“choice of law” refers to “the substantive laws of a particular state [to] govern the construction and validity of the contract,” whereas “forum selection” “designates a particular state or court jurisdiction as the one in which the parties will litigate any disputes arising out of their contract or contractual relationship” (citations omitted)). Instead, courts refuse to allow an expansive forum-selection clause to stretch a generic choice-of-law clause. *See* Coyle, 92 Wash. L. Rev. at 670–71; *see also, e.g., Fin. One Pub. Co. v. Lehman Bros. Special Fin., Inc.*, 414 F.3d 325, 335 (2d Cir. 2005) (“[T]ort claims are outside the scope of contractual choice-of-law provisions that specify what law governs construction of the terms of the contract, even when the contract also includes a broader forum-selection clause. . . . Presumably a contractual choice-of-law clause could be drafted broadly enough to reach such tort claims.” (citations omitted)). This Court should likewise infer from the broader forum-selection clause that the CSA’s leaner choice-of-law language means what it says: It governs only disputes over the agreement itself.

B. Plaintiffs’ UDTPA and DCA Claims Are Not Contractual In Nature.

Plaintiffs’ UDTPA and DCA claims fall outside that narrow scope. *See* ECF No. 52 ¶¶ 176–314. Neither cause of action requires a contract, alleges a breach of contract, or seeks performance of a contract. Rather, both claims turn on statutory liability.

That classification is well settled for the UDTPA. The Fourth Circuit has held that liability under Section 75-1.1 is “*ex delicto*, not *ex contractu*.” *ITCO Corp.*, 722 F.2d at 49

n.11; see *Broussard v. Meineke Discount Muffler Shops, Inc.*, 155 F.3d 331, 347 (4th Cir. 1998) (“The courts differentiate between contract and deceptive trade practice claims”); see also, e.g., *United Dominion Indus., Inc. v. Overhead Door Corp.*, 762 F. Supp. 126, 128 (W.D.N.C. 1991) (same); *Guzman*, 2016 WL 5679451, at *2 (same). Those holdings are consistent with Plaintiffs’ own allegations that Veterans Guardian violated the UDTPA not because Veterans Guardian failed to satisfy its contractual obligations, but because Veterans Guardian failed to obtain the accreditation that Plaintiffs’ counsel argue is required under 38 U.S.C. § 5901(a). See ECF No. 52 ¶¶ 283–87. That “dispute does not involve any issue of contractual construction, interpretation, or enforceability.” *Guzman*, 2016 WL 5679451, at *4 (citing *ITCO Corp.*, 722 F.2d at 49 n.11). Indeed, everyone in this case agrees that Veterans Guardian clearly disclosed to each client that it was not accredited by the VA and charged the amount each Plaintiff willfully consented to pay, for only those services Veterans Guardian told Plaintiffs it would provide, only when those services helped Plaintiffs to obtain the veterans’ benefits for which they sought such assistance.

Accordingly, Plaintiffs’ “claim[s] based on unfair and deceptive acts” are distinct from any hypothetical claims involving “the interpretation and construction of the contract.” *SmithKline Beecham Corp. v. Abbott Lab’ys*, No. 1:15CV360, 2017 WL 1051123, at *11 (M.D.N.C. Mar. 20, 2017) (citation omitted). It follows that “North Carolina courts would ignore the contractual choice of law provision in determining whether N.C. Gen. Stat. § 75–1.1 applies.” *United Dominion Indus., Inc.*, 762 F. Supp. at 128; see, e.g., *ITCO Corp.*, 722 F.2d at 49 n.11 (holding that because the “liability alleged”

under N.C. Gen. Stat. § 75-1.1 is “separate and distinct from” the contract, “the law of the state where the injuries are sustained should govern” the claim “without regard to the presence of the contractual choice of law provision”); *SmithKline Beecham Corp.*, 2017 WL 1051123, at *11 (“The contractual provision here may govern the choice of laws as to the interpretation and construction of the contract; however, it does not provide the applicable law for a claim based on unfair and deceptive acts.” (citation omitted)).

Plaintiffs’ DCA claim is no different. Liability under that cause of action rests on a purported violation of a statute, section 75-54(4), rather than a breach of a contract. Indeed, Plaintiffs base their claim on purported misrepresentations in Veterans Guardian’s “invoices,” rather than on any dispute over a provision of the CSA. *See* ECF No. 52 ¶¶ 290–314 (Plaintiffs’ DCA claim); ECF No. 110 at 23. And Plaintiffs (again) predicate those alleged misrepresentations on a violation of federal law (*i.e.*, collection of fees allegedly barred by 38 U.S.C. § 5901 *et seq.*). *See* ECF No. 52 ¶ 303; *see also* ECF No. 178 at 3 (“Here, the UDTPA and NCDCA claims depend on the same alleged unfair trade practice: that Guardian charged fees not allowed under federal law.” (footnote omitted)). On top of that, Plaintiffs’ DCA claim is independently premised on their UDTPA claim. *See Waddell v. U.S. Bank Nat’l Ass’n*, 395 F. Supp. 3d 676, 682 (E.D.N.C. 2019) (explaining that to proceed under the DCA, a plaintiff must establish the elements of a UDTPA claim). So the same analysis that forecloses application of the CSA’s narrow choice-of-law provision to Plaintiffs’ UDTPA claim holds for their DCA claim, too. Neither is contractual in nature.

Plaintiffs cannot dodge that conclusion by recasting their “UDTPA claims [as] tightly intertwined with issues of contract interpretation and enforceability,” ECF No. 110 at 21, or by reframing their DCA claims as concerning payment requests “based on [the] CSA,” ECF No. 127 at 9. Even if that contractual valence could be squared with the record, it would run headlong into the causes of action Plaintiffs chose to plead. That is because “where a contract governs the relationship between the parties, the rights and remedies of the parties lie in contract law and not in the UDTPA.” *Cross v. Ciox Health, LLC*, 438 F. Supp. 3d 572, 584 (E.D.N.C. 2020) (holding that even though plaintiffs “alleged no contract” claim expressly, where “a simple contract for the provision of a [service]” arguably “underlies plaintiffs’ alleged entitlement to relief,” their “UDTPA claim fails as a matter of law”). So Plaintiffs’ attempts to forge a “contractual center of this dispute” to invoke the CSA’s choice-of-law provision would only render their UDTPA claims (and residual DCA claims) “out of place.” *Broussard*, 155 F.3d at 347.

In fact, the contractual premise of Plaintiffs’ choice-of-law argument—*i.e.*, their own acknowledgment (ECF No. 110 at 21) that Veterans Guardian provided its services pursuant to a transparent contract that each class member willingly agreed to with full knowledge of free alternatives—only confirms that Plaintiffs cannot show the “type of *egregious* or *aggravating* circumstances” that must be “proved before the [UDTPA’s] provisions may take effect.” *Dalton v. Camp*, 548 S.E.2d 704, 711 (N.C. 2001) (emphasis in original) (citation and alterations omitted); *see also, e.g., Cross*, 438 F. Supp. 3d at 583 (“‘North Carolina law requires a showing of substantial aggravating circumstances to support a claim’ under the UDTPA.” (quoting *Broussard*, 155 F.3d at 347)). The record

at most reflects a mistake of law (*i.e.*, Veterans Guardian’s understanding, communicated clearly to Plaintiffs, that it does not “act[] as an agent” under federal law) that resulted in each class member being made better off (*i.e.*, with increased monthly benefits for the rest of their lives), consistent with the terms of the CSA and other undisputed disclosures to each class member. *Contra Stack v. Abbott Labs*, 979 F. Supp. 2d 658, 668 (M.D.N.C. 2013) (“The type of conduct that has been found sufficient to constitute a substantial aggravating factor has generally involved forged documents, lies, and fraudulent inducements.”). In other words, Plaintiffs cannot wedge their claims into the contractual scope of the CSA’s choice-of-law provision without undermining the merits on those same causes of action.¹

CONCLUSION

Because the CSA’s generic choice-of-law clause covers only contractual claims, but Plaintiffs chose to press UDTPA and DCA causes of action that are not contractual in nature, the CSA’s choice-of-law provision does not apply to this case. Consistent with the Court’s directive, ECF No. 177, Veterans Guardian has not (re)briefed why, under North Carolina’s default choice-of-law principles, the state where the harm finally occurred

¹ As this Court recognized recently, ECF No. 178 at 4–5, the CSA comports with the contractual requirements specified in the Military and Veteran Support Act (“MVSA”). That “North Carolina statutes were silent” on this issue prior to the MVSA’s enactment, *id.* at 6, only confirms that Plaintiffs have not met *their* burden of showing that the State ever had an “established public policy” completely barring the type of effective and reputable services Veterans Guardian provides or otherwise that the transparent contract-based interactions the MVSA blesses and each class member freely accepted were ever considered by the General Assembly to be “immoral, unethical, oppressive, unscrupulous, or substantially injurious” *Id.* at 3–4 (quoting *Walker v. Fleetwood Homes of N.C., Inc.*, 653 S.E.2d 393, 399 (N.C. 2007)).

dictates the substantive law that governs. *See SciGrip, Inc. v. Osae*, 838 S.E.2d 334, 343 (N.C. 2020); *P & L Dev., LLC v. Bionpharma, Inc.*, 367 F. Supp. 3d 421, 428–29 (M.D.N.C. 2019). If Veterans Guardian is correct, though, the named Plaintiffs—who undisputedly paid their respective fees in Texas, Ohio, and Mississippi, *see* Ford Dep. 14:9–15, 42:19–23, 77:3–78:8, ECF No. 106-2 at 4, 6, 9–10; Beard Dep. 8:3–5, ECF No. 106-9 at 4; Otters Dep. 10:18–11:1, ECF No. 106-16 at 5; Beard Dep. Ex. 16, ECF No. 106-15; Otters Dep. Ex. 22, ECF No. 106-21—could not invoke North Carolina’s UDTPA and DCA. So this litigation should not proceed, at least as currently certified. *See Jin v. Shanghai Original, Inc.*, 990 F.3d 251, 261–62 (2d Cir. 2021) (“[D]istrict courts must ensure that a certified class satisfies Rule 23 throughout the litigation, and possess the authority to alter or decertify the class if that is no longer the case.” (internal citations omitted)); *Hart v. La.-Pac. Corp.*, 641 F. App’x 222, 232 (4th Cir. 2016) (affirming district court’s decision to decertify the class where named plaintiffs’ claims no longer satisfied Rule 23(a)’s typicality requirement).²

² Even if Plaintiffs were right that the CSA’s choice-of-law provision applies to their claims, that would still trigger the UDTPA’s substantive requirement that each class member show that he or she suffered the alleged economic injury in North Carolina. *See Window World of Baton Rouge, LLC v. Window World, Inc.*, No. 15CVS1, 2024 WL 5053172, at *44 (N.C. Sup. Nov. 26, 2024), *amended on reconsideration*, 2024 WL 5098060 (Dec. 12, 2024); *see also Jackson v. Home Depot USA, Inc.*, 388 N.C. 109, 119 (2025) (“[E]ven if we assumed that the parties agreed to apply North Carolina law” under a contract, the consumer-protection statute at issue “would not provide a cause of action” for South Carolina residents allegedly harmed in South Carolina, given the presumption that “every statute is confined to the persons, property, rights, or contracts, which are within the territorial jurisdiction” of the State); *ITCO Corp.*, 722 F.2d at 48 n.9 (construing UDTPA as “designed to address primarily local concerns” so as to avoid any “cause for constitutional concern” that would arise from extraterritorial application).

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Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I hereby certify that, pursuant to the Court's June 10, 2026 Order, the foregoing document complies with the 3,000 word limit according to the word processing system used to process this document.

/s/ Caroline L. Wolverton

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CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2026 I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Caroline L. Wolverson

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