UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

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| JANAY CARGILE, BARBARA CLINTON, RAUL ARRIAGA, and MI HEE LEE, On Behalf of Themselves and All Others Similarly Situated, | § | |
| Plaintiffs, | § | |
| v. | § | CIVIL ACTION NO. 3: 04-CV-1365-B |
| BAYLOR HEALTH CARE SYSTEM, BAYLOR UNIVERSITY MEDICAL CENTER, BAYLOR MEDICAL CENTER AT GARLAND, AMERICAN HOSPITAL ASSOCIATION, and JOHN DOES 1 THROUGH 10 | § | |
| Defendants. | § | |

MEMORANDUM ORDER

The following motions are before the Court: (1) The Baylor Defendants' Motion to Dismiss First Amended Complaint (docket no. 23), filed September 8, 2004; and (2) Motion to Dismiss by American Hospital Association (docket no. 27), filed October 4, 2004. For the reasons that follow, the Court GRANTS both motions in part as they pertain to Plaintiffs' claims that are based on federal law.

## I. Factual and Procedural Background

This is one of a recent rash of purported class action lawsuits that have been filed nationwide on behalf of indigent and uninsured patients against non-profit hospitals that are exempt from paying federal income taxes under 26 U.S.C. § 501(c)(3). The crux of these lawsuits allege that, simply by qualifying for and receiving tax exempt status pursuant to § 501(c)(3) (and other state and local

analogues), these hospitals have formed binding contracts with the government (of which the plaintiffs are third party beneficiaries) and that the hospitals have breached those contracts by failing to operate solely for charitable purposes and by charging uninsured patients higher rates than their insured counterparts. Plaintiffs' theories have uniformly met with failure in the federal courts.

The stories of the four named Plaintiffs here are essentially the same. Each of them sustained injuries, were treated by Baylor[1], were uninsured, and complain that Baylor charged inflated rates that significantly exceeded those charged by Baylor to insured patients or patients covered under the federal Medicaid or Medicare programs. (Compl. ¶¶ 45-60)[2]. Plaintiffs also allege that Baylor refused to evaluate their eligibility for financial assistance or to offer them financial assistance.

Plaintiffs assert that Baylor operates as a charitable institution that is exempt from paying federal income taxes under 26 U.S.C. § 501(c)(3). (Compl. ¶ 30). According to Plaintiffs, Baylor's swollen bank accounts belie their purported "not-for-profit" status. (Compl. ¶¶ 28, 32). By accepting favorable tax treatment from federal, state, and local governments, Plaintiffs allege that

> the Baylor Defendant explicitly and/or implicitly agreed : to provide an emergency room open to all of its uninsured patients without regard to their ability to pay for such care; to provide mutually affordable medical care to all of its patients; to charge its insured patients only a reasonable cost for medical care; not to charge its uninsured patients the highest and full undiscounted cost for medical care; not to charge its uninsured patients a higher rate for medical care than its insured patients; to use its net assets and revenues to provide mutually affordable medical care to its uninsured patients; and not to pursue outstanding medical debt from its uninsured patients through humiliating collection efforts, lawsuits, liens and garnishments.

(Compl. ¶¶ 30, 31). Plaintiffs also bring civil conspiracy and aiding and abetting claims against the

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[1] For the sake of simplicity, throughout this order the Court will refer to Defendants Baylor Health Care System, Baylor University Medical Center, and Baylor Medical Center at Garland as "Baylor" or the "Baylor Defendants."

[2] All references to Plaintiffs' complaint throughout this order are to Plaintiffs' First Amended Complaint filed August 19, 2004.

American Hospital Association ("AHA") for allegedly advising and conspiring with Baylor to engage in unlawful activities.

Plaintiffs filed their class action complaint on June 22, 2004 against Baylor and the AHA. Baylor moved to dismiss that complaint on July 30, 2004. Plaintiffs amended their complaint on August 19, 2004, which Baylor moved to dismiss on September 8, 2004. The AHA filed its own motion to dismiss Plaintiffs' First Amended Complaint on October 4, 2004. As stated previously, the allegations raised in this case are similar if not identical to those asserted in recently-filed cases across the country. On October 19, 2004, the Judicial Panel on Multidistrict Litigation denied a motion to centralize these cases for coordinated pretrial proceedings. *See* In re *Not-For-Profit Hosps./Uninsured Patients Litig.*, 341 F.Supp.2d 1354, 1355-56 (J.P.M.L. Oct. 19, 2004). On December 3, 2004, Baylor moved to stay discovery in this matter until the Court ruled on Defendants' outstanding motions to dismiss. The Court granted this motion on January 31, 2005. It now turns to the merits of Defendants' motions to dismiss.

## II. Analysis

### A. Legal Standard

Motions to dismiss under Rule 12(b)(6) are disfavored and rarely granted. *Kaiser Aluminum & Chem. Sales, Inc. v. Avondale Shipyards, Inc.*, 677 F.2d 1045, 1050 (5th Cir. 1982). The Court liberally construes the complaint in the plaintiff's favor, and all pleaded facts are taken as true. *Campbell v. Wells Fargo Bank, N.A.*, 781 F.2d 440, 442 (5th Cir. 1986). Unless it appears beyond doubt that the plaintiff cannot prove any set of facts entitling it to relief, the complaint should not be dismissed. *Conley v. Gibson*, 355 U.S. 42, 45 (1957).

### B. Count One: Third-Party Breach of Contract

The torrent of similar lawsuits filed nationwide has spawned a large number of well-reasoned judicial opinions addressing claims indistinguishable to those raised here, finding them to be without merit. The Court sees no reason to extensively revisit this well-trodden ground. The Court will, however, undertake a brief examination of Plaintiffs' claims to the extent that they are based on federal law. For reasons stated in this order, *infra*, the Court will refrain from addressing Plaintiffs' supplemental state law claims at this time.

Plaintiffs' first count rests upon the theory that Baylor entered into an express and/or implied contract with the United States government when it received tax exempt status under § 501(c)(3). Plaintiffs allege that Baylor breached this contract by failing to operate exclusively for a charitable purpose, failing to provide certain care, failing to provide affordable health care, and by engaging in aggressive debt collection practices. Plaintiffs claim to be third-party beneficiaries of Baylor's "contract" with the federal government, and they claim to have been damaged by Baylor's alleged breach.

No court has ever found that § 501(c)(3) creates a contractual relationship between the United States government and the entity receiving the tax exemption. *See e.g. Lorens v. Catholic Health Care Partners*, 356 F.Supp.2d 827, 831 (N.D. Ohio 2005); *Valencia v. Mississippi Baptist Med. Ctr.*, 363 F.Supp.2d 867, 873 (S.D. Miss. 2005) (collecting cases). Settled law provides that, absent clear legislative intent to the contrary, statutes simply do not create contracts; rather, they declare policy. *Nat'l R.R. Passenger Corp. v. Atchison, Topeka & Santa Fe Ry. Co.*, 470 U.S. 451, 466-67 (1985) ("This well-established presumption is grounded in the elementary proposition that the principal function of a legislature is not to make contracts, but to make laws that establish the policy of the state."). Nothing in the text of § 501(c)(3) indicates that Congress intended the application of that

section to create a binding contract whenever an entity receives a tax exemption under its terms. *Quinn v. BJC Health Sys.*, 364 F.Supp.2d 1046, 1051 (E.D. Mo. 2005); *Valencia*, 363 F.Supp.2d at 874. Thus, there is no contract.

Having found that § 501(c)(3) does not create a contractual relationship between the federal government and those entities, like Baylor, that qualify for and receive tax exemptions under that section, "there is no underlying contract on which Plaintiffs may base an action for third party breach of contract." *Valencia*, 363 F.Supp.2d at 875. Accordingly, Count One of Plaintiffs' Complaint must fail to the extent it is based on the view that § 501(c)(3) creates a contractual relationship between Baylor and the United States government of which Plaintiffs are third party beneficiaries.

**C. Count Three: Breach of Duty of Good Faith and Fair Dealing**

In light of the Court's determination that § 501(c)(3) does not give rise to a contractual relationship between Baylor and the federal government, Plaintiffs' claim that Baylor breached the duty of good faith and fair dealing must fall. One cannot breach such a duty with respect to a non-existent contract. Count Three of Plaintiffs' Complaint is accordingly dismissed with prejudice to the extent it is predicated on federal law.

**D. Count Four: Breach of Charitable Trust**

Plaintiffs contend that, by accepting federal, state, and local tax exemptions under § 501(c)(3), Baylor entered into a "public charitable trust", of which Plaintiffs are intended beneficiaries, to provide affordable medical care to uninsured patients. (Compl. ¶ 91). Plaintiffs' allegations are unsupported in law. "Charitable trusts require express language demonstrating a specific intent to create the trust." *Shriner v. Promedica Health Sys., Inc.*, 2005 WL 139128, at * 3 (N.D. Ohio Jan. 21, 2005). Section 501(c)(3) does not include such language. Therefore, there is no trust. *Id.*; *Quinn*, 364 F.2d at 1052.

Plaintiffs' fourth cause of action must therefore be dismissed to the extent it is based on federal law.

**E. Count Six: Violations of the Emergency Medical Treatment and Active Labor Act ("EMTALA")**

The EMTALA requires hospitals to provide any person that comes through the emergency department door with an appropriate medical screening. 42 U.S.C. § 1395dd(a). If an emergency medical condition is found to exist, then the hospital must either stabilize the individual's condition, or, under certain circumstances, transfer the individual to another medical facility. *Id.* at § 1395dd(b). Once the patient's condition is stabilized, the hospital may then elect to continue to treat the individual, transfer to the individual to another facility, or discharge the individual. *Valencia*, 363 F.Supp.2d at 879. Plaintiffs here allege that, "[b]efore the Baylor Defendants would provide emergency medical screening and/or treatment for 'emergency medical conditions' to the Plaintiffs and the Class, they first analyzed their ability to pay for such medical care and required the Plaintiffs and the Class to sign form contracts agreeing to pay the Baylor Defendants in full for unspecified and undiscounted medical charges." (Compl. ¶ 103). Plaintiffs complain that these practices violated the EMTALA and have proximately caused them damages. (*Id.* at ¶ 104).

Assuming for the sake of argument that Baylor's actions did violate the EMTALA, Plaintiffs' claim still fails because they have not alleged a cognizable injury under the Act. Personal harm is an element of an EMTALA claim. 42 U.S.C. § 1395dd(d)(2)(A); *Quinn*, 364 F.Supp.2d at 1053; *Valencia*, 363 F.Supp.2d at 879. Although Plaintiffs here have generally alleged that they suffered "personal harm", they state that this harm is "in the form of economic injuries and other damages". (Compl. ¶ 104). "EMTALA does not encompass recovery for purely economic injury", however. *Burton v. William Beaumont Hosp.*, 373 F.Supp.2d 707, 716 (E.D. Mich. 2005); *Valencia*, 363 F.Supp.2d at 880 ("every court addressing the issue has determined that economic injuries are insufficient for a

showing of personal harm under the EMTALA."); *Corley v. John D. Archibold Memorial Hosp., Inc. et al.*, No. 1:04-CV-110(WLS), at 10 (M.D. Ga. March 31, 2005) (dismissing EMTALA claim with prejudice where plaintiff did not allege any personal injury but only "economic injury and other damages"). Because the type of harm alleged to have been suffered by Plaintiffs will not support a claim under the EMTALA, Plaintiffs' claims under that Act must be dismissed with prejudice.

**F. Count Seven: Unjust Enrichment/Constructive Trust**

Plaintiffs allege that Baylor has been unjustly enriched at Plaintiffs' expense by receiving federal state and local tax exemptions without living up to its side of the bargain by failing to provide "mutually affordable medical care to Plaintiffs" and by "charging the Plaintiffs and the Class a higher amount for medical care than their uninsured patients." (Compl. ¶ 106). In addition to damages resulting from Baylor's "unjust enrichment", Plaintiffs also seek to have a constructive trust placed on Baylor's assets for all of its purported misdeeds. (Compl. ¶ 108). To the extent these claims are founded on federal law, they must be dismissed. As stated by Judge Webber in *Quinn*:

> The Court has already found that, as a matter of law, Plaintiffs have failed to demonstrate the existence of any contract under § 501(c)(3) or that they are third-party beneficiaries under such a contract. Moreover, an unjust enrichment claim rests upon the concept that a person who wrongfully obtained the property will restore it to its rightful owner. Plaintiffs here would not be the rightful owners of money the defendants retained as a result of their federal tax-exempt status.

*Quinn*, 364, F.Supp.2d at 1055. For the same reasons, Plaintiffs' unjust enrichment and constructive trust claims, to the extent they are based on federal law, are dismissed.

**G. Count Eight: Injunctive Declaratory Relief**

Plaintiffs' federal-based claims for injunctive and declaratory relief must also be dismissed with prejudice for the reasons stated above, namely, that Plaintiffs have not shown that a valid contract exists between Baylor and the federal government of which Plaintiffs are third-party beneficiaries.

**H. Count Nine: Federal Fair Debt Collection Practices Act ("FDCPA")**

In support of their FDCPA claim, Plaintiffs assert that Baylor "charged inflated, excessive, and discriminatory rates to uninsured patients and aggressively attempted to collect such rates." (Compl. ¶ 116). They further allege "[t]he Baylor Defendants have conspired with and directed their collection agents and debt collectors to collect deceptive, discriminatory, and inflated debts which are violative of the [FDCPA]." (*Id.* at ¶ 117). "The FDCPA is intended to protect consumers from unfair debt collection practices by prohibiting 'debt collectors' from using abusive tactics or false or misleading representations when attempting to collect debts." *Brincks v. Taylor*, 2002 U.S. Dist. LEXIS 606, at *4 (N.D. Tex. Jan. 8, 2002). A "debt collector" is defined by the Act as:

> [A]ny person . . . in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another . . .. [T]he term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts.

15 U.S.C. § 1692a(6). It is undisputed here that Baylor's reason for being is to provide health care, not to collect bills. Creditors who collect their debts in their own name and whose principal business is not debt collecting are not subject to the Act. *Aubert v. Am. Gen. Fin., Inc.*, 137 F.3d 976, 978 (7th Cir.1998); *Carlson v. Long Island Jewish Med. Ctr.*, 2005 WL 1631142, at *2 (E.D.N.Y. July 11, 2005).

Plaintiffs state, however, that "[u]pon information and belief, the Baylor Defendants have collected debt for themselves using names that are not their corporate names or the names in which they do business with the public as health care providers." (Compl. ¶ 116). Plaintiffs further allege that "the Baylor Defendants are debt collectors within the scope of the Fair Debt Collection Practices Act and, in conjunction with their deceptive, discriminatory, and harassing conduct, violated the Act." (*Id.*). The term "debt collector", as defined by the FDCPA, specifically includes "any creditor

who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts." 15 U.S.C. § 1692a(6). And under § 1692e(14), "[t]he use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization[]" constitutes a violation of the Act. 15 U.S.C. § 1692e(14). *See Lester E. Cox Med. Ctr. v. Huntsman*, 408 F.3d 989, 992 (8th Cir. 2005) ("Designation as a debt collector is the starting point for liability under the statute, not the end. Section 1692a(6) works in concert with § 1692e(14)."). Plaintiffs have therefore arguably made out a claim for relief under § 1692e(14).

Baylor argues that Plaintiffs' claim that Baylor is a debt collector under § 1692a(6) is insufficient and conclusory because that claim is based "on information and belief." Citing *Tuchman v. DSC Communications Corporation*, 14 F.3d 1061, 1068 (5th Cir. 1994), Baylor contends that "information and belief" pleading is only appropriate when the matters are "peculiarly within the opposing parties' knowledge." *Id.* at 1068. *Tuchman*, however, involved allegations of securities fraud, to which Rule 9(b)'s heightened pleading requirements applied.[3] *Id.* at 1067. A claim under the FDCPA, however, is not subject to Rule 9(b); Plaintiffs need only meet Rule 8(a)'s more liberal pleading standard. *See Carlson*, 2005 WL 1631142, at *4 (applying Rule 8(a) to FDCPA claim); *Sullivan v. Equifax, Inc.*, 2002 WL 799856, at *3 (E.D. Pa. April 19, 2002) ("[C]ourts considering the issue have invariably determined the sufficiency of FDCPA pleadings by applying Rule 8 rather than Rule 9(b)") (collecting cases). Therefore, the Court cannot say that Plaintiffs can prove no set of facts that would entitle them to relief. Accordingly, the Court finds that dismissing Plaintiffs' §

[3] Baylor also cites to *Kowal v. MCI Communications Corp.*, 16 F.3d 1271, 1279 n.3 (D.C. Cir. 1994), but it too involved allegations of securities fraud. *Id.* at 1277-78.

1692e(14) claim with prejudice would be inappropriate at this time.

That is not to say that that claim is not without its deficiencies. The Court notes that Plaintiffs have not alleged in their Complaint that Baylor used names not its own in connection with collecting a debt owed *by the named Plaintiffs*. Instead, the paragraph setting forth the § 1692e(14) violation makes only generic reference to "uninsured patients" and fails to mention whether Baylor collected *Plaintiffs'* debts under other names. To have standing under the FDCPA, the challenged debt collection practices must be in connection with the collection of the *plaintiff's* debts. 15 U.S.C. § 1692k(a) ("any debt collector who fails to comply with any provision of this subchapter with respect to *any person* is liable to *such person* . . .") (emphasis added); *Wright v. Fin. Serv. of Nowalk, Inc.*, 22 F.3d 647, 649 n.1 (6th Cir. 1994) ("FDCPA allows *any person* who has been harmed by a proscribed debt collection practice . . . to sue for damages under § 1692k [].") (emphasis in original). Because Plaintiffs' Complaint, as it now stands, does not allege that *Plaintiffs* were the object of a § 1692e(14) violation under the FDCPA, the Court finds that Plaintiffs' claim for relief under that section should be dismissed without prejudice. The Court will allow Plaintiffs 10 days from the date of this order to re-plead its claim under § 1692e(14) of the FDCPA. If Plaintiffs fail to properly re-plead that claim, or are unable to do so under principles of Rule 11, Federal Rules of Civil Procedure, the Court will dismiss that claim with prejudice.

In all other respects, Plaintiffs' FDCPA claim must be dismissed with prejudice. Plaintiffs assert in paragraph 114 that they and the members of the class "were and are pursued for debts allegedly owed to the Baylor Defendants." (Compl. ¶ 114). However, the FDCPA does not proscribe altogether the age old practice of debt collecting. Plaintiffs accurately state that the FDCPA is aimed at targeting the use of *false*, *deceptive*, or *misleading* practices in connection with the *collection* of a debt.

(*Id.* at ¶ 115). The Act also bars debt collectors from "communicating . . . to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed." 15 U.S.C. § 1692e(8); (Compl. ¶ 115).

As pointed out by Baylor, Plaintiffs' complaint appears to be centered around the existence and/or amount of the underlying debt, not with the manner in which it was collected. This is a misuse of the FDCPA. *See Adair v. Sherman*, 230 F.3d 890, 896 (7th Cir. 2000) ("[A]n FDCPA action is not an action to establish a debt but an action contesting the method of collection of that debt."). Although Plaintiffs label Baylor's debt collection practices as "deceptive", they plead no facts suggesting that Baylor communicated false information to Plaintiffs about the amount or character of the debt or deceived Plaintiffs in connection with the collection of any debt. Rather, Plaintiffs appear to be claiming that Baylor duped the government into granting it tax benefits and subsidies by measuring the amount of charity care it provided by what it charged uninsured patients rather than the true cost of the services. (Compl. ¶¶ 118-19). That allegation, however, has nothing to do with the FDCPA. In short, all of Plaintiffs' claims under the FDCPA, save for their claim under § 1692e(14) of that Act, must be dismissed with prejudice for failure to state a claim.

**I. Count Ten: Violations of 42 U.S.C. § 1983 and the Fifth and Fourteenth Amendments**

Plaintiffs allege that Baylor has violated their equal protection rights under the Fifth and Fourteenth Amendments to the United States Constitution by, generally speaking, engaging in discriminatory pricing and misusing state collection laws. To state a claim under § 1983 a plaintiff must allege that the complained of conduct was committed by a person acting under color of state law. *Harvey v. Harvey*, 949 F.2d 1127, 1130 (11th Cir. 1992). Plaintiffs have simply failed to show how Baylor's pricing of its services or its collection practices may be attributable to the State. *Rendell-Baker*

*v. Kohn*, 457 U.S. 830, 838 (1982); *Kolari*, 2005 WL 710452, at *9; *Burton*, 347 F.Supp.2d at 498-99; *Corley*, No. 1:04-CV-110 (WLS), at 12. Consequently, their § 1983 claim must fail.

**J. Counts Eleven and Twelve: Claims Against the AHA for Civil Conspiracy/Concert of Action and Aiding and Abetting**

Plaintiffs allege in Counts 11 and 12 of their Complaint that the AHA conspired with Baylor by advising it and other non-profit member hospitals with regard to billing and collection practices, and that it conspired with Baylor to help Baylor retain its tax exempt status. Through such acts Plaintiffs assert that the AHA conspired with Baylor to violate the Texas Deceptive Trade Practices Act, the Plaintiffs' constitutional rights, and to breach Baylor's duty of good faith and fair dealing to the Plaintiffs. (Compl. ¶ 161). As all of Plaintiffs' federal-based claims against Baylor have fallen, the AHA cannot be held liable for having aided and abetted Baylor's allegedly wrongful actions, nor for having allegedly conspired with Baylor to commit those actions. Although the Court has granted Plaintiffs a 10-day window to re-plead their claim under § 1692e(14) of the FDCPA, Plaintiffs have not alleged that the AHA conspired with or aided and abetted Baylor in connection with that specific FDCPA claim. Therefore, all of Plaintiffs' claims against the AHA, to the extent they are premised on federal law, must be dismissed with prejudice. *Kolari v. New York-Presbyterian Hosp.*, 2005 WL 710452, at *13-14 (S.D.N.Y. March 29, 2005).

**K. The State Law Claims**

All of Plaintiffs' federal claims have been dismissed with prejudice, save for Plaintiffs' claim against Baylor for violation of the FDCPA for attempting to collect a debt in a name other than its own, which has been dismissed without prejudice with leave to re-plead. The Court declines to examine Defendants' motions to dismiss Plaintiffs' state law claims at this time in light of the possibility that Plaintiffs may not be able to state a valid cause of action under the FDCPA, in which case the

Court will then evaluate whether Plaintiffs' state law claims should be dismissed pursuant to 28 U.S.C. § 1367(c)(3).

## III. Conclusion

For the reasons stated above, the Court GRANTS Baylor's Motion to Dismiss in part. The federal law aspects of Plaintiffs' causes of action against Baylor are DISMISSED with prejudice, with the exception of Plaintiffs' claim for relief under § 1692e(14) of the FDCPA, which is DISMISSED without prejudice. Plaintiffs shall have 10 days from the date of this order to re-plead their claim for relief under § 1692e(14) of the FDCPA. The AHA's Motion to Dismiss is GRANTED in part. All federal claims asserted by Plaintiffs against the AHA are DISMISSED with prejudice. For the reasons stated in this order the Court reserves judgment on Defendants' respective motions to dismiss Plaintiffs' state law claims at this time.

**SO ORDERED.**

**SIGNED August 10th, 2005**

**JANE J. BOYLE**
**UNITED STATES DISTRICT JUDGE**