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MAR 24 2005	
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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Gregory James Fields,)
)
)
 Plaintiff,)
)
 vs.)
)
 Banner Health; American Health)
 Association,)
)
 Defendants.)
)
 _____)

JUDGMENT IN A CIVIL CASE
CV 04-1297 PHX SRB

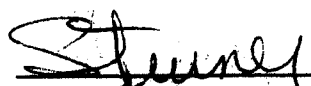
_____ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X **Decision by Court.** This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the Court has granted the Defendants Motion to Dismiss, therefore the Plaintiff shall take nothing. This complaint and action are hereby dismissed.

March 24, 2005
Date

RICHARD H. WEARE
District Court Executive/Clerk



(By) Deputy Clerk

cc: (all counsel)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

GREGORY JAMES FIELDS, On Behalf
of Himself and All Others Similarly
Situating,

Plaintiff,

vs.

BANNER HEALTH; AMERICAN
HEALTH ASSOCIATION,

Defendants.

No. CIV-04-1297-PHX-SRB
ORDER

Plaintiff Gregory James Fields ("Fields" or "Plaintiff") filed the instant action as a class action complaint against Defendants Banner Health ("Banner") and the American Hospital Association ("AHA"). Plaintiff alleges on behalf of himself and all others similarly situated that Banner has failed to provide charitable care to the indigent uninsured and that this failure, together with other facts, constitutes: (1) a breach of Banner's contract with the federal and Arizona governments formed by virtue of Banner's tax-exempt status under 26 U.S.C. § 501(c)(3) and Ariz. Rev. Stat. (A.R.S.) § 43-1201; (2) a breach of Banner's duty of good faith and fair dealing; (3) a violation of the Arizona Consumer Fraud Act (ACFA), A.R.S. § 44-1521 *et seq.*; (4) a breach of an implied public trust; (5) a violation of the Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd

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1 (1997); and (6) unjust enrichment.¹ With respect to AHA, Plaintiff charges that AHA has
2 conspired with and aided and abetted Banner in its breaches of contract and the duty of good
3 faith and fair dealing and in the violation of ACFA. Defendants move to dismiss Plaintiff's
4 complaint for failure to state a claim upon which relief can be granted pursuant to Rule
5 12(b)(6) of the Federal Rules of Civil Procedure (Docs. 4, 39). The Court now rules on
6 Defendants' motions.

7 **I. BACKGROUND**

8 Plaintiff was treated in the emergency room of Thunderbird Samaritan Medical
9 Center, one of Banner's hospitals, sometime during 2001.² Plaintiff alleges that his treatment
10 was conditioned on his signature of a contract agreeing to pay unspecified and, as he later
11 discovered, inflated charges for his treatment. Plaintiff further alleges that he was uninsured
12 and unable to pay the charges for his medical care, and that he informed Banner of his
13 indigence, but that Banner continued to pursue him for the full amount of the bill, going so
14 far as to file adverse credit reports against Plaintiff.

15 Banner has enjoyed tax-exempt status under federal and Arizona law since 1997.
16 According to Plaintiff, such exemption from taxation creates a contract with the United
17 States and the State of Arizona to provide charitable or affordable medical care. Plaintiff
18 alleges that Banner's practice of charging uninsured, indigent patients for the full cost of
19 their medical care and using aggressive collection practices to recover medical debt breaches
20 Banner's contractual obligations as well as other statutory provisions. Plaintiff's action is
21 but one of dozens of lawsuits filed across the country by uninsured, indigent patients seeking
22 damages and injunctive relief from tax-exempt health care providers on various theories.
23 Commonly appearing are breach of contract claims predicated on the theory that uninsured,

24
25 ¹The Court does not regard Count Seven of Plaintiff's First Amended Class Action
26 Complaint, which merely seeks injunctive and declaratory relief for Banner's other
violations, as a stand-alone violation.

27 ²The exact date of Plaintiff's treatment is never specified in the First Amended
28 Complaint.

1 indigent patients such as Plaintiff are the intended third-party beneficiaries of tax exemption
2 "contracts" between the health care provider and the government (federal or state).
3 Although the Court could ascertain no case to date in which a plaintiff has succeeded on
4 such a theory, the Court will nevertheless address Defendants' Rule 12(b)(6) Motions to
5 Dismiss this and Plaintiff's other causes of action in the context of the specific facts set forth
6 in his First Amended Complaint.

7 **II. LEGAL STANDARDS AND ANALYSIS**

8 Dismissal for insufficiency of a complaint is proper if, on its face, the complaint fails
9 to state a claim. *Lucas v. Bechtel Corp.*, 633 F.2d 757, 759 (9th Cir. 1980). A Rule 12(b)(6)
10 dismissal for failure to state a claim can be based on either: (1) the lack of a cognizable legal
11 theory; or (2) insufficient facts to support a cognizable legal claim. *Balistreri v. Pacifica*
12 *Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990); *Robertson v. Dean Witter Reynolds, Inc.*,
13 749 F.2d 530, 534 (9th Cir. 1984).

14 In determining whether a complaint states a valid claim, all allegations of material fact
15 are taken as true and construed in the light most favorable to the non-moving party. *Clegg*
16 *v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). The complaint should not be
17 dismissed unless it appears beyond doubt that there are "no set of facts" which would entitle
18 the plaintiff to relief under the asserted claim. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957);
19 *see also Balistreri*, 901 F.2d at 701.

20 **A. Claims Against Banner**

21 **1. Breach of Contract**

22 In order to state a claim for breach of contract, Plaintiff must demonstrate at a
23 minimum: (1) the creation of a contract between Banner and the federal and Arizona
24 governments by virtue of Banner's exemption from taxation by statute; (2) the existence of
25 a right of action granting private citizens the right to sue for breach of such a contract; and
26 (3) standing on the part of Plaintiff as a third-party beneficiary. *See Lorens v. Catholic*
27 *Health Care Partners*, Civ. No. 04-1151, 2005 WL 407719, at *2 (N.D. Ohio Jan. 13, 2005)

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1 (following identical three steps of analysis for breach of contract claim by indigent uninsured
2 against health care provider). Banner argues that Plaintiff's arguments fail as a matter of law
3 at each turn.

4 **a. Creation of Contract by Statute**

5 Plaintiff's pursuit of Banner for breach of contract rests on the theory that Banner's
6 enjoyment of tax-exempt status derives from a contract with the federal government under
7 26 U.S.C. § 501(c)(3) and with the Arizona government under A.R.S. § 43-1201³ wherein
8 Banner agreed to provide care to Plaintiff and other indigent uninsured patients at a
9 reasonable cost in exchange for exemption from taxation. Failure to provide such care,
10 Plaintiff charges, constitutes a breach of contract for which Banner is liable.⁴

11 It is axiomatic that a cause of action for breach of contract cannot accrue in the
12 absence of a valid contract. Furthermore, it is long and well established that statutes do not
13 create contracts, but declare policy. *Nat'l R.R. Passenger Corp. v. Atchison, Topeka & Santa*
14 *Fe Ry. Co.*, 470 U.S. 451, 466-67, 105 S. Ct. 1441, 1451-52 (1985); *see also Proksa v. Ariz.*
15 *State Sch. for the Deaf and the Blind*, 74 P.3d 939, 941 (2003). "[A]bsent an adequate
16 expression of an actual intent of the State to bind itself, this Court simply will not lightly
17 construe that which is undoubtedly a scheme of public regulation to be, in addition, a private
18 contract to which the State is a party." *Nat'l R.R.*, 470 U.S. at 466-67, 105 S. Ct. at 1452
19 (citation omitted). Plaintiff appears to suggest that the exchange of consideration by the
20 parties demonstrates such actual intent, attributing to *Tucker v. Ferguson*, 89 U.S. 527, 22
21 L. Ed. 805 (1874), the holding that an exemption from taxation becomes a contract where

22
23 ³Arizona law provides that organizations exempt from taxation under 26 U.S.C. § 501
24 are also exempt from Arizona income tax. A.R.S. § 43-1201. As a result, the Court's
25 discussion of the existence of a contract under federal law applies with equal force to
any alleged contract under Arizona law.

26 ⁴Contracts of the federal government are governed by federal law. *E.g., Keydata Corp.*
27 *v. U.S.*, 504 F.2d 1115, 1124 (Ct. Cl. 1974).

1 consideration exists. More accurately stated, *Tucker* stands for the obvious and slightly
2 different proposition that, where a statute gratuitously grants an exemption, no contract
3 exists. 89 U.S. at 574-75. This does little to help Plaintiff's case, and more recent precedent
4 provides no richer fodder for Plaintiff's arguments. Tax exemptions are modernly considered
5 a matter of "legislative grace," *Levy v. Comm'r of Internal Revenue*, 732 F.2d 1435, 1436
6 (9th Cir. 1984); *IHC Health Plans, Inc. v. Comm'r of Internal Revenue*, 325 F.3d 1188, 1194
7 (10th Cir. 2003), and there is no indication that contractual rights inhere even where such an
8 exemption is granted only following a showing of charitable purpose. Courts have repeatedly
9 held that the tax code is not contractual in nature, see *Lane County v. Oregon*, 74 U.S. 71,
10 80, 19 L. Ed. 101 (1868); *McLaughlin v. Comm'r of I.R.S.*, 832 F.2d 986, 987 (7th Cir. 1987),
11 and Plaintiff offers no plausible argument for the application of the law of contracts to
12 exemptions granted by the code. The tax code and its exemptions are, "unlike contracts
13 . . . inherently subject to revision and repeal." *Proksa*, 74 P.3d at 941 (quoting *Nat'l R.R.*, 470
14 U.S. at 466, 105 S. Ct. at 1441), and to construe an exemption as a contract would
15 "enormously curtail the operation of democratic government . . . [by] creating rights that
16 could never be retracted or even modified without buying off the groups upon which the
17 rights had been conferred." *Id.* (quoting *Pittman v. Chicago Bd. of Educ.*, 64 F.3d 1098,
18 1104 (7th Cir. 1995)).

19 Even less persuasive is Plaintiff's contention that § 501(c)(3) is an analogue of the
20 Hill-Burton Act, 42 U.S.C. § 291, which courts have recognized as an enforceable contract
21 between hospitals and the government. As noted by other district courts, substantial
22 differences exist between the Hill-Burton Act and § 501(c)(3), see *Lorens*, 2005 WL 407719,
23 at *2, the most pertinent of which is that Hill-Burton Act fund recipients must sign a
24 "Memorandum of Agreement" containing express contractual language, *Euresti v. Stenner*,
25 458 F.2d 1115, 1118-19 n.4 (10th Cir. 1972), while organizations receiving § 501(c)(3)
26 recognition sign no such written agreement. *Washington v. Med. Ctr. of Cent. Ga., Inc.*,

1 *Ferguson v. Centura Health Corp.*, Civ. No. 04-M-1285, 2004 WL 3213447, at *3 (D. Colo.
2 Dec. 29, 2004). As a matter of law, § 501(c)(3) does not create a contract between the state
3 or federal government and Banner, leaving Plaintiff with no contract on which he can base
4 a valid claim for breach.

5 **b. Private Right of Action**

6 Even if Plaintiff could establish the existence of a contract, Banner argues that
7 Plaintiff cannot bring suit because § 501(c)(3) does not provide for a private right of action
8 either expressly or impliedly. Plaintiff counters that a private right of action must be implied
9 from Congressional acts forming the contract, both because a legal action for breach is a
10 "customary legal incident" of the contractual relationship and because an action for breach
11 of contract may be brought under the allegedly analogous Hill-Burton Act.

12 Unlike the Hill-Burton Act, § 501(c)(3) contains no *express* provision of a private
13 right of action by intended third-party beneficiaries for breach of contract. The existence of
14 an *implied* private right of action depends upon Congressional intent, which is discerned
15 primarily by analyzing the statute's language and legislative history. *Transamerica Mortgage*
16 *Advisors, Inc. v. Lewis*, 444 U.S. 11, 15-16, 100 S. Ct. 242, 245 (1979); *see also Scientex*
17 *Corp v. Kay*, 689 F.2d 879, 881 (9th Cir. 1982).

18 Nothing has been presented that would suggest Congress intended to create a private
19 cause of action to enforce the requirements for obtaining and maintaining tax-exempt status.
20 In general, "the legislative scheme of the [Internal Revenue Code] . . . 'does not indicate that
21 Congress intended to enforce these tax laws by . . . authorizing private attorneys general.'" *Arvin v. Go Go Inv. Club*, 1996 WL 708589, at *4 (N.D. Cal. Dec. 5, 1996) (quoting *Turner v. Unification Church*, 473 F. Supp. 367, 377 (D.R.I. 1978)). The language of the particular
22 statute in question, § 501(c)(3), lists organizations that may apply for tax-exempt status; it
23 does not refer to the individuals who are expected to benefit from those organizations'
24 charitable efforts. Because the statute concentrates "on the person regulated rather than the
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1 individuals protected . . . [there is] no implication of an intent to confer rights on a particular
2 class of person." *Alexander v. Sandoval*, 532 U.S. 275, 289, 121 S. Ct. 1511, 1521 (2001).

3 Furthermore, even if § 501(c)(3)'s text made clear that it contemplated the protection
4 of indigent, uninsured patients and other organizations' beneficiaries, "[t]he mere fact that
5 the statute was designed to protect [a group] does not require the implication of a private
6 cause of action for damages on their behalf." *Transamerica*, 444 U.S. at 24, 100 S. Ct. at
7 249. Congress is fully aware of how to create a private right of action, as demonstrated by
8 its successful attempt in the Hill-Burton Act, 42 U.S.C. § 300s-6, but chose not to do so with
9 respect to § 501(c)(3). Knowledge and power, combined with the refusal to exercise them,
10 appears as deliberate forbearance from creating a private cause of action. *Transamerica*, 444
11 U.S. at 20-21, 100 S. Ct. at 247-48. Absent a private cause of action, Plaintiff's claim must
12 be dismissed for failure to state a claim upon which relief may be granted.

13 **c. Standing**

14 Assuming *arguendo* that Plaintiff could establish the existence of a contract and a
15 private cause of action, he must still demonstrate that he possesses standing to litigate his
16 claims. By Plaintiff's own admission, he does not seek to challenge or revoke Banner's tax-
17 exempt status under the tax code; instead, he urges the Court to find that he has standing to
18 pursue Banner on its contract with the government. Generally, a third-party beneficiary may
19 recover for breach of contract where "(1) the contract itself indicates an intention to benefit
20 the third party, (2) the benefit contemplated is intentional and direct and (3) the contracting
21 parties intend to recognize the third party as the primary party in interest." *Flagstaff Med.*
22 *Ctr., Inc. v. Sullivan*, 962 F.2d 879, 892 (9th Cir. 1992). The Second Restatement of
23 Contracts, however, modifies this general rule: a "promisor who contracts with a
24 government or governmental agency to do an act or render a service for the public is not
25 subject to contractual liability to a member of the public for consequential damages resulting
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1 from . . . failure to perform unless . . . the terms of the promise provide for such liability . .
2 . ." Restatement (Second) of Contracts § 313 (1981).

3 Plaintiff contends that he and other indigent uninsured are the intended beneficiaries
4 of § 501(c)(3), and that as such, they may sue to ensure that they are provided with the care
5 required. The only support offered for this contention is the courts' recognition of the
6 standing of similar patients under the Hill-Burton Act. The existence of standing under a
7 separate statute substantially different in its terms from § 501(c)(3), however, does little to
8 persuade the Court that standing exists here. The Court notes that the Hill-Burton Act
9 specifically provides a private right of action, thereby defining a specific group of individuals
10 as intended beneficiaries and providing for liability to them, 42 U.S.C. § 300s-6; § 501(c)(3)
11 does not. The beneficiaries of § 501(c)(3) are neither named nor clearly identified. *See*
12 *Montana v. United States*, 124 F.3d 1269, 1273 (Fed. Cir. 1997) (requiring clear
13 identification of class of intended beneficiaries).

14 To interpret the general language of § 501(c)(3) as conferring standing upon the
15 potential beneficiaries of all tax-exempt organizations would open the door to a flood of
16 unanticipated litigation. *See German Alliance Ins. Co. v. Home Water Supply Co.*, 226 U.S.
17 220, 231, 33 S. Ct. 32, 35 (1912) (discussing the dangers of extending liability on
18 government contracts to contract beneficiaries); *Price v. Pierce*, 823 F.2d 1114, 1121 (7th
19 Cir. 1987) (same). Although the recipients of assistance from tax-exempt organizations may
20 benefit rather immediately from § 501(c)(3), a government contract which benefits some
21 individuals more directly than others is still a contract "for the public." *See Berberich v.*
22 *United States*, 5 Cl. Ct. 652, 656 (Cl. Ct. 1984) (applying Restatement (Second) § 313 with
23 respect to government contract benefitting residents of single town); *Martinez v. Socoma*
24 *Cos., Inc.*, 11 Cal. 3d 394, 406 (1974) (residents of low-income neighborhood); *Nguyen v.*
25 *U.S. Catholic Conference*, 547 F. Supp 1333, 1348 (W. D. Pa. 1982) (alien refugees);
26 *Drummond v. Trustees of the Univ. of Pa.*, 1993 WL 1156036, 1993 Phila. Cty. Rptr. LEXIS

1 141, *2 (Pa. Commw. Ct. Feb. 22, 1993) (scholarship recipients); *Clifton v. Suburban Cable*
2 *TV Co.*, 642 A.2d 512, 515 (Pa. Super. Ct. 1994) (prisoners). § 501(c)(3) reflects no intent
3 to benefit Plaintiff to any greater degree than the rest of the public. Therefore, Plaintiff's
4 lack of standing requires dismissal of his breach of contract claim even if other grounds do
5 not. The Court finds it unnecessary to reach Defendants' additional arguments for dismissal
6 of this count.

7 **2. Breach of Implied Public Trust**

8 Count Two of Plaintiff's Complaint alleges that Banner's actions breached not only
9 its contract with the federal and Arizona governments, but also an implied public trust arising
10 under federal law. Plaintiff contends that Banner entered into a public charitable trust by
11 accepting tax-exempt status under § 501(c)(3) and breached this trust, of which Plaintiff is
12 a beneficiary, by failing to provide care in accordance with its terms. Banner argues that this
13 claim must be dismissed because no charitable trust was formed and for lack of standing.
14 The Court agrees on both points.

15 Charitable trusts only arise from express, specific language indicating the intent to
16 create a trust, Restatement (Second) of Trusts §§ 348-49 (1959), and § 501(c)(3) lacks such
17 language. Even assuming that a valid charitable trust exists, Plaintiff still must establish that
18 he has standing. "As a general rule no private citizen can sue to enforce a charitable trust
19 merely on the ground that he believes he is within the class to be benefited [sic] by the trust
20" George Gleason Bogert, *The Law of Trusts and Trustees* § 414 (2d ed. 1991); *see also*
21 Restatement (Second) of Trusts § 391 (1959). In Arizona, "potential beneficiaries of a
22 charitable trust have no standing to enforce, construe, or require an accounting of the trust
23 or trust property." *Collier v. Bd. of Nat'l Missions of the Presbyterian Church*, 464 P.2d
24 1015, 1018 (Ariz. Ct. App. 1970); *accord Robert Schalkenbach Found. v. Lincoln Found.,*
25 *Inc.*, 91 P.3d 1019, 1024 (Ariz. Ct. App. 2004). Standing is limited to those with a special
26 interest in the enforcement of a trust, Restatement (Second) of Trusts § 391, cmt. d (1959),
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1 and there is no evidence that Plaintiff has any interest more specific or special than that
2 derived from membership in a large class of beneficiaries. Absent a valid charitable trust or
3 standing to sue thereupon, Count Two of Plaintiff's complaint against Banner must be
4 dismissed.

5 **3. Breach of Duty of Good Faith and Fair Dealing**

6 In view of the lack of a valid contract, Plaintiff's attendant claim for breach of the duty
7 of good faith and fair dealing must be dismissed. *Liu v. Amway Corp.*, 347 F.3d 1125, 1138
8 (9th Cir. 2003); *Brazil v. FedEx Ground Package Sys., Inc.*, Civ. No. 03-6287-TC, 2004 WL
9 2457776 (D. Or. Nov. 1, 2004).

10 **4. EMTALA**

11 In addition to claims brought under the federal common law, Plaintiff brings suit for
12 violation of EMTALA. Plaintiff alleges that his treatment in 2001 was delayed and
13 conditioned upon his signature of an agreement to pay undisclosed fees for his medical care.
14 Banner highlights the Act's two-year statute of limitations as a basis for dismissal of this
15 claim, pointing out that Plaintiff's Complaint was filed on June 23, 2004, considerably more
16 than two years from the unspecified date of Plaintiff's treatment. Plaintiff proffers the weak
17 counterargument that he was unaware of the full scope of the violation until he discovered
18 the allegedly inflated rates he was charged for his care, and that the statute of limitations
19 should be tolled until the (unspecified) date of this discovery.

20 The Court finds that this argument is based on a misunderstanding of the protections
21 of EMTALA. While EMTALA provides that individuals visiting hospital emergency rooms
22 must receive a limited amount of emergency medical care without regard to their ability to
23 pay, it does not prohibit hospitals from charging for this medical care. A delay⁵ in treatment
24

25 ⁵Plaintiff never alleges that Banner refused to provide the appropriate medical care,
26 only that Banner delayed provision of that care until he agreed in writing to be
27 responsible for the cost of his care.

1 constitutes a violation of EMTALA, 42 U.S.C. § 1395dd(h); treatment followed by the
2 attempt to exact allegedly inflated fees for that care is not made illegal by the Act. Therefore,
3 Plaintiff's contention that he did not "discover" the EMTALA violation until he was charged
4 for his treatment is incorrect. Any delay of his medical treatment pending signature of a fee
5 agreement occurred and was known at the time of his visit to Banner's facility, and the statute
6 of limitations began to run at that time. See *Monrouzeau v. Asociacion del Maestro*, No. Civ.
7 02-2506, 2005 WL 273119, at *3 (D.P.R. Feb. 4, 2005); *Vazquez Morales v. Estado Libre*
8 *Asociado de Puerto Rico*, 967 F. Supp. 42, 46-47 (D.P.R. 1997). Since the statute of
9 limitations began to run in 2001, and EMTALA does not provide for tolling of the limitations
10 period, *Vogel v. Linde*, 23 F.3d 78, 80 (4th Cir. 1994); *Sherwood v. Finch*, No. Civ. 00-349-
11 HU, 2000 WL 1862562, at *8 (D. Or. Dec. 20, 2000); *Estate of Enck v. Beggs*, Civ. No. 94-
12 1568-PFK, 1995 WL 519148, at *1 (D. Kan. Aug. 30, 1995) ("The EMTALA does not
13 contain a tolling provision or otherwise provide for any exception to the two-year statute of
14 limitations."), it expired prior to the institution of Plaintiff's action in 2004. Banner's motion
15 to dismiss must be granted with respect to Plaintiff's EMTALA claim.

16 **5. ACFA and Unjust Enrichment**

17 The only counts remaining against Banner consist of Plaintiff's Arizona state law
18 claims of unjust enrichment and for the violation of ACFA. The exercise of jurisdiction over
19 pendent state law claims is a matter of discretion. *United Mine Workers v. Gibbs*, 383 U.S.
20 715, 725, 86 S. Ct. 1130, 1138 (1966); *Ruud v. U.S. Dept. of Labor*, 347 F.3d 1086, 1089 n.
21 3 (9th Cir. 2003) (recognizing codification and slight modification of *Gibbs* by 28 U.S.C. §
22 1367). Where all federal claims have been dismissed before trial, abstention from the
23 exercise of jurisdiction over state law claims is appropriate. 28 U.S.C. § 1367(c)(3); see
24 *Gibbs*, 383 U.S. at 726, 86 S. Ct. at 1139. Accordingly, this Court dismisses Plaintiff's
25 ACFA and unjust enrichment claims.

1 **B. Claims Against AHA**

2 Plaintiff alleges that Defendant AHA's lobbying and information-gathering and
3 -analyzing activities on behalf of its member hospitals constituted the conspiracy to commit
4 and aiding and abetting of Defendant Banner's breach of contract, breach of the duty of good
5 faith and fair dealing, and violation of ACFA.⁶ To the extent that Banner's claims for the
6 underlying breaches of contract and the duty of good faith and fair dealing must be dismissed
7 pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted,
8 Plaintiff's allegations against AHA of conspiracy and aiding and abetting must also be
9 dismissed. Plaintiff does not dispute that Arizona law requires a live underlying wrong in
10 order to pursue claims of conspiracy and aiding and abetting. *Wells Fargo Bank v. Arizona*
11 *Laborers, Teamsters & Cement Masons Local No. 395 Pension Trust Fund*, 38 P.3d 12, 26,
12 28 (Ariz. 2002). Furthermore, with respect to the portion of Plaintiff's claims against AHA
13 related to Banner's alleged violation of ACFA, a state law claim, the Court declines to
14 exercise its jurisdiction. *See* 28 U.S.C. § 1367(c)(3). AHA's Motion to Dismiss the claims
15 against it must be granted.

16 **IT IS ORDERED** granting Defendant Banner's Motion to Dismiss (Doc. 4).

17 **IT IS FURTHER ORDERED** granting Defendant AHA's Motion to Dismiss (Doc.
18 39).

19 **IT IS FURTHER ORDERED** directing the Clerk of the Court to terminate this
20 action.

21 DATED this 23 day of March, 2005.

22
23 

24 **Susan R. Bolton**
25 United States District Judge

26 _____
27 ⁶No other underlying wrongs were pled in Plaintiff's complaint.