

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

EDWARD C. JELLISON, and NICOLAS ARZATE, on behalf of themselves and all others similarly situated)		
)		
PLAINTIFFS)		
)		
vs.)	Civil Action No.:	
)	6:04-cv-1021-ORL-28-KRS	
)		
FLORIDA HOSPITAL HEALTHCARE SYSTEM, INC. d/b/a FLORIDA HOSPITAL; and ADVENTIST HEALTH SYSTEM/SUNBELT, INC.)		
)		
DEFENDANTS.)		

FIRST AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW, the Plaintiff **EDWARD C. JELLISON**, by and through the undersigned counsel of record, and files this his First Amended Class Action Complaint, adding as a Plaintiff **NICOLAS ARZATE**, and adding as a party Defendant **AMERICAN HOSPITAL ASSOCIATION**. The Plaintiffs are seeking monetary damages, injunctive and other equitable relief against the Defendants **FLORIDA HOSPITAL HEALTHCARE SYSTEM, INC. d/b/a FLORIDA HOSPITAL** (hereinafter referred to as “Florida Hospital”); **ADVENTIST HEALTH SYSTEM/SUNBELT, INC.** (hereinafter referred to as “AHS”); **AMERICAN HOSPITAL ASSOCIATION** (hereinafter “AHA”) (hereinafter collectively referred to as “Defendants”) and in support thereof would show unto the Court the following to-wit:

I.
INTRODUCTION

Florida Hospital is a Florida not-for-profit, tax-exempt corporation that operates one of the largest health care systems in Florida, operating approximately seventeen (17) hospitals in Florida. Florida Hospital is owned and operated by Adventist Health System/Sunbelt, Inc., a not-for-profit, 501(c) charitable, tax-exempt corporation that owns and manages hospitals and health-related facilities in the state of Florida and elsewhere. Florida Hospital and AHS have operated free from federal and state taxes because they promised the government that they would operate as charity providers of health care for the uninsured and that they would not engage in business directly or indirectly, for the benefit of private interests. In reality, Florida Hospital and AHS do just the opposite: they charge their uninsured patients significantly more than those who have insurance, generally pursuing the poor or uninsured relentlessly by aggressive and humiliating collection techniques; and through either “connected” board members and/or physicians whose for-profit businesses are favored and subsidized by the “tax-free” organization, are rampantly violating the federal and state prohibition against profiteering by “private interests.”

Florida Hospital and AHS and their confederates who employ the same business model have thereby amassed and hoarded billions of dollars in cash and marketable securities, which otherwise should be available to provide charity care to the uninsured who were contemplated by the tax exemption. Moreover, enormous property and revenues have been insulated from taxation, the effect of which has bestowed upon Florida Hospital and AHS and their confederates greater liquidity than that possessed by most state and local governments.

The American Hospital Association is the national trade association for the nonprofit hospital

industry, and serves as the representative for Defendants Florida Hospital and AHS. The American Hospital Association has conspired with, and aids and abets, Florida Hospital and AHS and its other nonprofit hospital members in carrying out their unfair, discriminatory, unconscionable and oppressive business practices.

This Complaint asks the Court to certify a Class of the intended beneficiaries of these Defendants' commitment to the government, more fully defined below, and to require them to honor the commitments for which they received their unique freedom from taxation.

II. **PARTIES**

1. Plaintiff Edward C. Jellison is, and was at all times relevant hereto, an adult resident citizen of Orlando, Florida.

2. Plaintiff Nicolas Arzate is, and was at all times relevant hereto, an adult resident citizen of Orlando, Florida.

3 Defendant Florida Hospital Healthcare System, Inc. d/b/a Florida Hospital, is a Florida not-for-profit corporation with its principal place of business located at 602 Courtland Street, Suite 162, Orlando, Florida. Florida Hospital owns and operates approximately seventeen (17) hospitals in Florida, including the 1,000 bed Florida Hospital Main Campus in Orlando, Florida.

4. Defendant Adventist Health System/Sunbelt, Inc., is a Florida not-for-profit corporation with its principal place of business located at 111 North Orlando Avenue, Winter Park, Florida. AHS is one of the largest healthcare systems in the United States with 37 hospitals in ten (10) states. AHS owns and operates Florida Hospital, which is its' flagship organization and the largest healthcare provider in Central Florida.

5. American Hospital Association, is an Illinois not-for-profit corporation with its headquarters at One North Franklin, Chicago, Illinois. AHA is the national trade association for the nonprofit hospital industry, and serves as the representative for Defendant Florida Hospital and its nonprofit hospital members.

III. **JURISDICTION AND VENUE**

6. This Court has jurisdiction over the subject matter of this controversy pursuant to 28 U.S.C. §1331 and 1367, because Plaintiffs' claims arise out of a federal contract between Defendants Florida Hospital and AHS and the United States Government in which these Defendants agreed to provide mutually affordable medical care to their uninsured patients in exchange for a tax exempt status under 26 U.S.C. §501(c)(3). This Court also has subject matter jurisdiction of this controversy under 42 U.S.C. §1395 dd because, upon information and belief, Defendants Florida Hospital and AHS conditioned providing emergency room medical care to the Plaintiffs and the Class on their ability to pay and on financial guarantees from the Plaintiffs and the Class. This Court further has subject matter jurisdiction of this controversy under 28 U.S.C. §1340 because Plaintiffs' claims arise out of Defendants' duties and obligations under 26 U.S.C. §501(c)(3).

7. Venue in this district is proper pursuant to 28 U.S.C. §1391(b).

IV. **FACTS**

8. Defendant Florida Hospital Healthcare System, Inc. d/b/a Florida Hospital represents itself as Florida based, tax exempt, charitable, nonprofit hospital system with its principal place of business located in Orlando, Florida. Florida Hospital is one of the largest health care systems in the State of Florida operating seventeen (17) hospitals and various other medical facilities. Florida

Hospital was formed in 1908 by Seventh-day Adventist leaders and is now the flagship organization of the multi-billion dollar Adventist Health System/Sunbelt, Inc.

9. Defendant Adventist Health System/Sunbelt, Inc., is a Florida not-for-profit healthcare system with its principal place of business located in Winter Park, Florida. AHS was formed in 1973 to oversee the operation of the Southern and Southwestern healthcare organizations for the Seventh-day Adventist Church. AHS hospitals see more than 3 million patients annually and is one of the largest and most financially successful nonprofit healthcare systems in the United States with over \$2.5 billion in assets and \$1.78 billion in annual revenue.

10. Defendants Florida Hospital and AHS entered into express and/or implied Agreements with the United States Government and the State of Florida to provide mutually affordable medical care to all of their patients in return for substantial tax exemptions. An express and/or implied contractual relationship was thereby created between Defendants Florida Hospital and AHS and the United States Government and the State of Florida to accomplish such purpose. Defendants' uninsured and medically indigent patients during the period between July 7, 1994 and July 7, 2004 were the express and/or implied intended third party beneficiaries of such Agreements.

11. Defendants Florida Hospital and AHS receive a federal income tax exemption as purported "charitable" institutions under 26 U.S.C. §501(c)(3). Under §501(c)(3), Defendants Florida Hospital and AHS are required to operate "exclusively" in furtherance of a charitable purpose, with no part of their operations attributable directly or indirectly to any noncharitable commercial purpose and with no part of their earnings inuring to the benefit of any private individual or entity. By accepting this favorable tax exemption, Defendants Florida Hospital and AHS explicitly and/or implicitly agreed: to operate exclusively for charitable purposes; to provide an

emergency room open to all of their uninsured patients without regard to their ability to pay for such care; to provide mutually affordable medical care to all of their uninsured patients; not to charge their uninsured patients the highest and full undiscounted cost for medical care; not to charge their uninsured patients a higher rate for medical care than their insured patients; to use their net assets and revenues to provide mutually affordable medical care to their uninsured patients; and not to pursue outstanding medical debt from their uninsured patients through humiliating collection efforts, lawsuits, liens and garnishments.

12. Defendants Florida Hospital and AHS also receive state and local income, property and sales tax exemptions from the State of Florida under Fla. Stat. §§ 196.192, 196.197, 199.183 and Fla. Const. Art. VII, § 3. Under § 199.183 in order for a nonprofit hospital to be exempt from taxation it must provide charitable services, a reasonable percentage of which shall be without cost to those unable to pay. Under § 196.192 a nonprofit hospital devoted to providing charitable care is exempt from ad valorem taxes. By accepting these favorable state and local tax exemptions, Defendants explicitly and/or implicitly agreed: to operate exclusively for charitable purposes; to provide mutually affordable medical care to all of their uninsured patients; not to charge their uninsured patients the highest and full undiscounted cost of medical care; not to charge their uninsured patients a higher rate for medical care than their insured patients; to use their net assets and revenues to provide mutually affordable medical care to their uninsured patients; and not to pursue outstanding medical debt from their uninsured patients through humiliating collection efforts, lawsuits, liens and garnishments.

13. Despite their favorable tax exempt status and their substantial net revenues and asset reserves, Defendants Florida Hospital and AHS have breached their Agreements with the United

States Government, and the State of Florida by failing to provide emergency room medical care to their uninsured patients without regard to their ability to pay for such care; charging their uninsured patients the highest and full undiscounted cost for medical care at grossly inflated rates from the actual cost of providing such services; allowing noncharitable for-profit physician groups and service providers to derive profit from their tax exempt hospitals; by engaging in aggressive efforts to collect such medical debt from their uninsured patients through abusive, harassing, and humiliating collection lawsuits, liens, and garnishments; and upon information and belief providing discounted medical care to their Board of Directors, to entities connected to their Board of Directors and to the Board of Directors of the various hospitals comprising Defendants' systems. Defendants' uninsured patients have therefore not received the benefit of the Agreements between the Defendants and the United States Government and the State of Florida. These uninsured patients primarily consist of the working class who do not qualify for Medicaid or charity care but cannot afford private health insurance and/or cannot obtain health insurance through their employers.

14. Defendants Florida Hospital and AHS set their charges for medical services at highly inflated rates that bear no connection to the actual cost of providing the service. While Defendants Florida Hospital and AHS give private insurance companies and governmental third party payors like Medicare and Medicaid large discounts off this gross or "sticker price," all of its uninsured patients are charged 100% of the full sticker price, which can be multiple times what insureds are charged for the same service. Defendants Florida Hospital and AHS realize substantial revenues from this discriminatory charging practice. Defendants Florida Hospital and AHS also realize the highest profit per discharge on their uninsured patients who pay such grossly inflated prices.

15. Despite sizeable net revenues and asset reserves, Defendants Florida Hospital and AHS provide little to no charity care to their uninsured patients. Defendants' level of charity care constitutes only a small amount of their gross charges. Defendants Florida Hospital and AHS have never provided an amount of uncompensated care equal to their market share.

16. In addition, Florida Hospital and AHS use Enron-style accounting tricks to grossly distort the small amount of charity care they do provide to uninsured patients. Defendants Florida Hospital and AHS report this amount of charity care as the amount of gross charges-which are grossly inflated-rather than the cost of actually providing the service. Furthermore, upon information and belief, Defendants Florida Hospital and AHS further exaggerate the amount of charity care that they do by simply referring to all bad-debt writes offs as charity care.

17. Before Defendants Florida Hospital and AHS admit any patient, including their uninsured patients, into their hospitals and/or emergency rooms for medical care, they require their patients to sign a form contract promising to pay them in full for unspecified and undocumented charges for medical care that are set by Defendants in their sole discretion.

18. Not only do Defendants Florida Hospital and AHS charge their uninsured patients the highest rates for medical care, which they cannot afford to pay, they have also engaged in the uniform pattern and practice of aggressively pursuing such debt through abusive, humiliating, and harassing collection efforts, such as collection lawsuits, liens, and garnishments. Such lawsuits have driven many of Defendants' patients to bankruptcy and/or financial ruin.

19. Upon information and belief, while Defendants Florida Hospital and AHS charge their uninsured patients the full undiscounted cost for medical care, they provide substantial discounts off the gross charges to their Board of Directors and entities owned, controlled or

connected to their Board of Directors. These discounts are in direct violation of Defendant Florida Hospital and AHS' obligations under 26 U.S.C. § 501(c)(3); Fla. Stat. §§196.192, 196.197, 199.183 and Fla. Const. Art. VII, § 3.

20. Defendants Florida Hospital and AHS also allow numerous outside for-profit physician groups and service providers to use their tax-exempt hospitals to derive a profit. These for-profit physician groups and service providers practice in Defendants' taxpayer subsidized hospitals and then bill patients for work done at these tax-exempt hospitals. These for-profit physician groups and service providers are non-charitable entities which do not have a charitable mission or purpose. By allowing noncharitable for-profit entities with no charitable mission to derive a profit from their charitable tax-exempt hospitals, Defendants Florida Hospital and AHS have not operated actually and exclusively for charitable purposes in violation of their obligations under 26 U.S.C. §501(c)(3), and Fla. Stat. §§196.192, 196.197, 199.183 and Fla. Const. Art. VII, § 3.

21. The Defendant American Hospital Association ("AHA"), is the national trade association for the nonprofit hospital industry, and serves as the representative for Defendant Florida Hospital, the hospitals operated by Defendant AHS and its other nonprofit hospital members. According to its website, the AHA "ensures that members' perspectives and needs are heard and addressed in national health policy development, legislative and regulatory debates, and judicial matters."

22. AHA, through internal memos called "white papers" and other publications, provides substantial assistance and guidance to Florida Hospital, AHS' hospitals and the nonprofit hospital industry on its billing and collection practices for uninsured patients, including publications such as

“Seven Strategies to Improve Your Bottom Line”. In these publications, the AHA encourages Florida Hospital, AHS hospitals and its other nonprofit hospital members to inflate its chargemaster prices, which only Florida Hospital’s and AHS’ hospitals’ uninsured patients are charged. These inflated chargemaster prices have the intended effect of increasing Florida Hospital’s and AHS hospitals’ outlier payment reimbursements under the Disproportionate Share Hospital (DSH) and Medicare reimbursement programs.

23. On December 17, 2003, the AHA sent out a “white paper” entitled “Federal Regulations Hamper Hospitals’ Efforts to Assist Patients of Limited Means” to Florida Hospital, AHS hospitals and its other member nonprofit hospitals, which falsely advised such hospitals that the Medicare laws and regulations prevented them from offering discounts to uninsured patients and required them to aggressively collect medical debt from the uninsured through collection lawsuits, liens, and garnishments.

24. The AHA actively conceals from, and misrepresents to, the government and regulatory agencies the amount of charity care provided by Florida Hospital, AHS’ hospitals and its nonprofit hospitals to the uninsured. According to a June 21, 2004, article in Modern Healthcare entitled “Well Kept Secret”, “the AHA collects charity care data [from its members] in its annual hospital survey but does not report the total. Instead, it reports uncompensated care which includes bad debt as well as charity care.”

25. The AHA also falsely justifies to the public and governmental entities the reasoning for the outrageous billing and collection practices employed by Florida Hospital, AHS hospitals and its nonprofit hospital members. In a December 16, 2003, letter to the United States Department of Health and Human Services Secretary Tommy Thompson, the AHA, while admitting that Florida

Hospital, AHS hospitals and its nonprofit hospital members charge its uninsured patients the full price for medical care, falsely represented to the Secretary that Florida Hospital, AHS hospitals and its member nonprofit hospitals were required by the federal Medicare regulations to charge and aggressively collect such grossly inflated medical expenses.

26. On February 19, 2004, Secretary Thompson, as the ultimate governmental authority on the applicable Medicare regulations, exposed the falsity of the AHA's prior advice and representations, stating that the Medicare regulations have never required nonprofit hospitals to charge its uninsured patients the highest price for medical care nor prevented such hospitals from offering discounts to its uninsured patients. Moreover, on June 24, 2004, in testimony before the House of Representatives Energy and Commerce Subcommittee on Oversight and Investigations, the Director of the Center for Medicare and Medicaid Services testified that Medicare billing requirements did not prevent discounting medical care to uninsured patients and did not require aggressive collection efforts toward the uninsured. Similar testimony was provided by the Chief Counsel of the Office of Inspector General of the Department of Health and Human Services, who testified that the federal regulations were clear and that there was no justification for interpreting such regulations as preventing discounts to the uninsured.

V. PLAINTIFFS

EDWARD JELLISON

27. Plaintiff Edward C. Jellison is, and was at all times relevant hereto, an adult resident citizen of Orlando, Florida who resides at 3637 Dubsdread Circle, Orlando, Florida.

28. On or about February 3, 2002 Plaintiff Jellison sought medical treatment at Florida Hospital Medical Center in Orlando, Florida. Plaintiff Jellison was hospitalized from February 3, 2002 to February 21, 2002. Plaintiff Jellison was charged \$116,634.17 for his stay at Florida Hospital. In comparison, Medicare and Insurance companies would pay approximately \$12,000 and \$14,000 respectively for the same medical treatment.

29. Instead of rendering charity care to Plaintiff Jellison, Defendant Florida Hospital charged him a rate for his medical care and treatment that far exceeded the actual cost of providing the care and treatment and the rate at which insurance companies are charged. Plaintiff Jellison offered to pay \$28,000 to \$30,000 for his medical treatment but Defendant Florida Hospital refused and started sending collections letters and making harassing phone calls. Despite Plaintiff Jellison's repeated attempts to pay a fair and reasonable amount for the medical care and services he received by February 2003 his hospital bill had inexplicably increased to \$135,200.67.

30. Defendant Florida Hospital's refusal to grant Plaintiff Jellison charitable medical care has left him in an untenable financial position teetering on the brink of ruin.

NICOLAS ARZATE

31. Plaintiff Nicolas Arzate is, and was at all times relevant hereto, an adult resident citizen of Orlando, Florida who resides at 714 Pond Pine Street, Orlando, Florida.

32. On or about August 1, 2003 Plaintiff Arzate sought medical treatment at Florida Hospital Medical Center in Orlando, Florida after suffering severe stomach pain. Plaintiff Arzate was admitted to Florida Hospital Medical Center and underwent an emergency appendectomy, which he quickly recovered from and was discharged. Plaintiff Arzate was charged \$16,060.83 for his medical treatment at Florida Hospital.

33.. Instead of rendering charity care to Plaintiff Arzate Defendant Florida Hospital charged Plaintiff Arzate a rate for his medical care and treatment that far exceeded the actual cost of providing the care and treatment and the rate at which insurance companies are charged. Immediately after Plaintiff Arzate's medical treatment Florida Hospital began harassing Plaintiff Arzate with collection letters and phone calls.

34. Defendant Florida Hospital's refusal to grant Plaintiff Arzate charitable medical care has left him in an untenable financial position teetering on the brink of ruin.

VI.
CLASS ACTION ALLEGATIONS

35. Plaintiffs bring this class pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3) on behalf of a Class consisting consisting of all persons who received any form of healthcare treatment at any hospital comprising the Florida Hospital system, or any nonprofit hospital owned and operated by AHS, from July 21, 1994 through the date of commencement of class notice, and who were uninsured at the time of treatment.

36. Excluded from the Class are defendants, defendants' officers, directors, legal representatives, heirs, successors, and assigns; and any judicial officer assigned to this case and his or her immediate family.

37. Plaintiffs Edward C. Jellison and Nicolas Arzate are members of the Class they seek to represent.

38. The Class consists of thousands of individuals and therefore is so numerous that joinder is impracticable.

39. Plaintiffs' claims are typical of the claims of the Class because they and all of the Class sustained damages as a result of Defendants Florida Hospital's and AHS' unfair and discriminatory charging and/or collection practices seeking the full undiscounted cost of medical care.

40. There are numerous questions of law and fact common to the Class which predominate over any questions affecting only individual class members, including:

- (a) whether Defendants Florida Hospital and AHS entered into express and/or implied Agreements with the United States Government and the State of Florida that in return for substantial tax exemptions, they would: operate exclusively for charitable purposes; provide emergency room medical care to the Plaintiffs and the Class without regard to their ability to pay for such medical care; provide mutually affordable medical care to the Plaintiffs and the Class; and not to seek to collect outstanding medical debt from the Plaintiffs and the Class through aggressive, abusive, and humiliating collection practices;
- (b) whether Defendants Florida Hospital and AHS breached said Agreements with the U.S. Government, and/or State of Florida by: failing to operate exclusively for charitable purposes; failing to provide emergency room medical care to the Plaintiffs and the Class without regard to their ability to pay for such medical care; failing to provide mutually affordable medical care to the Plaintiffs and the Class; and by seeking to collect outstanding medical

debt from the Plaintiffs and the Class through aggressive, abusive, and humiliating collection practices;

- (c) whether the Plaintiffs and the Class are express and/or implied intended third party beneficiaries to said Agreements between Defendants Florida Hospital and AHS and the United States Government, and the State of Florida;
- (d) whether Defendants Florida Hospital and AHS charged the Plaintiffs and the Class the full undiscounted cost of medical care in violation of their charitable, nonprofit, tax exempt status;
- (e) whether Defendants Florida Hospital and AHS charged the Plaintiffs and the Class higher amounts for medical care than their insured patients in violation of their charitable, nonprofit, tax exempt status;
- (f) whether Defendants Florida Hospital and AHS profited by charging the Plaintiffs and the Class the highest rates for medical care;
- (g) whether Defendants Florida Hospital and AHS charged the Plaintiffs and the Class unreasonable charges for medical care;
- (h) whether Defendants Florida Hospital and AHS conditioned emergency room medical screening and/or treatment to the Plaintiffs and the Class on their ability to pay or financial guarantees to pay for such medical care in violation of 26 U.S.C. §501(c)(3) and 42 U.S.C. §1395 dd;
- (i) whether Defendants Florida Hospital and AHS should have utilized their sizable financial resources to provide a greater amount of mutually affordable

medical care to the Plaintiffs and the Class pursuant to their charitable, nonprofit, tax exempt status;

- (j) whether Defendants Florida Hospital and AHS have utilized aggressive, unfair, abusive, and harassing collection practices, lawsuits, liens, and garnishments to collect medical payments from the Plaintiffs and the Class in violation of their charitable, nonprofit, tax exempt status;
- (k) whether Defendants Florida Hospital and AHS violated the anti-inurement provision of 26 U.S.C. §501(c)(3) by providing substantial discounts in medical care to their Board of Directors, to entities connected to their Board of Directors and to the Board of Directors of the hospitals comprising their system;
- (l) whether Defendants Florida Hospital and AHS failed to operate exclusively for charitable purposes by allowing noncharitable for-profit entities to derive a profit from its use of their tax-exempt hospitals in violation of 26 U.S.C. §501(c)(3) and Fla. Stat. §§196.192, 196.197, 199.183 and Fla. Const. Art. VII, § 3;
- (m) whether Defendants Florida Hospital and AHS breached their duty of good faith and fair dealing to the Plaintiffs and the Class;
- (n) whether a charitable trust was created for the benefit of the Plaintiffs and the Class;
- (o) whether the Defendants' acts and omissions as alleged in the Complaint violated the Florida Deceptive and Unfair Trade Practices Act;

- (p) whether Defendants Florida Hospital and AHS have been unjustly enriched at the Plaintiff's and the Class' expense;
- (q) whether Defendant AHA conspired with Defendants Florida Hospital and AHS to breach their contracts with the United States Government and State of Florida;
- (r) whether Defendant AHA aided and abetted Defendants Florida Hospital and AHS in breaching its contracts with the United States Government and State of Florida;
- (r) whether Defendants Florida Hospital and AHS should be enjoined from continuing their unfair, discriminatory, and abusive conduct; and
- (s) whether Defendants are liable to the Plaintiffs and the Class in this action, as alleged in the Complaint.

41. All common questions are able to be resolved through the same factual occurrences as specifically and/or generally alleged herein.

42. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class. Plaintiffs have no claims antagonistic to those of the Class. Plaintiffs have retained competent and experienced counsel in complex class actions, including mass tort, products liability and healthcare multi-district litigation. Counsel is committed to the vigorous prosecution of this action.

43. The prosecution of separate actions by the Plaintiff and individual members of the Class against the Defendants would create a risk of inconsistent or varying adjudications on the common issues of law and fact related to this action.

44. A Class Action is superior to all other available methods for the fair and efficient adjudication of this controversy.

45. The expense and burden of litigation would substantially impair the ability of the Class Members to pursue individual cases in order to initiate their rights. In the absence of a class action, the Defendants will retain the benefits of their wrongdoing.

46. Class Certification pursuant to Rule 23(b)(3) is appropriate because the common issues of fact and law alleged herein are common to the Class and predominate over any questions affecting only individual members, thereby rendering the class action superior to all other available methods for the fair and efficient adjudication of this controversy.

47. Class Certification is also appropriate pursuant to Rule 23(b)(2) because, as set forth in the Complaint, Defendants Florida Hospital and AHS have acted and/or refused to act on grounds generally applicable to the Plaintiffs and the Class, thereby warranting appropriate injunctive and/or declaratory relief.

VII.
CAUSES OF ACTION

COUNT ONE
THIRD PARTY BREACH OF CONTRACT

48. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in paragraphs 1 through 47 of the Complaint.

49. Defendants Florida Hospital and AHS, as purported charitable entities under 26 U.S.C. §501(c)(3), entered into an express and/or implied Agreement with the United States Government pursuant to §501(c)(3) that in return for a substantial federal income tax exemption valued in the millions of dollars they would: operate exclusively for charitable purposes; provide

emergency room medical care to the Plaintiffs and the Class without regard to their ability to pay for such medical care; provide mutually affordable medical care to the Plaintiffs and the Class; not pursue outstanding medical debt from the Plaintiffs and the Class by engaging in aggressive, abusive, and humiliating collection practices; and not provide financial inurement to private individuals or entities.

50. Defendants Florida Hospital and AHS, as purported institutions of public charity under Fla. Stat. §§196.192, 196.197, 199.183 and Fla. Const. Art. VII, § 3, also entered into express and/or implied Agreements with the State of Florida, pursuant to Fla. Stat. §§196.192, 196.197, 199.183 and Fla. Const. Art. VII, § 3, that in return for substantial state income, property, and sales tax exemptions valued in the millions of dollars, they would: operate actually and exclusively for charitable purposes; provide emergency room medical care to the Plaintiffs and the Class without regard to their ability to pay for such medical care; provide mutually affordable medical care to the Plaintiffs and the Class; not to pursue outstanding medical debt from the Plaintiffs and the Class by engaging in aggressive, abusive, and humiliating collection practices; and not provide financial inurement to private individuals and entities.

51. The Plaintiffs and the Class are the express and/or implied intended third party beneficiaries of Defendant Florida Hospital's and AHS' Agreements with the United States Government and the State of Florida.

52. Defendants breached the above-mentioned Agreements with the United States Government and the State of Florida by: failing to provide emergency room medical care to the Plaintiffs and the Class without regard to their ability to pay for such medical care; charging the Plaintiffs and the Class the highest and full undiscounted cost of medical care; charging the Plaintiffs

and the Class significantly more than their insured patients for the same medical services; failing to use their net assets and revenues in the billions of dollars to provide mutually affordable medical care to the Plaintiffs and the Class; utilizing aggressive, abusive and humiliating collection practices such as lawsuits, liens, and garnishments to collect such inflated and unreasonable medical debt from the Plaintiffs and the Class; allowing noncharitable for-profit entities to derive a profit from use of their tax-exempt hospitals; and upon information and belief, providing substantial discounts off the gross charges to their Board of Directors, to entities connected to their Board of Directors and to the Board of Directors of the various hospitals comprising Defendants' systems. As a result of such conduct, the Plaintiffs and the Class have not received the benefit of Defendants' agreements with the United States Government and the State of Florida. Such conduct is also contrary to the Defendants' purported charitable purpose and their nonprofit status.

53. The aforementioned breaches of contract have proximately caused the Plaintiffs and the Class economic injury and other damages.

COUNT TWO
BREACH OF CONTRACT

54. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in paragraphs 1 through 53 of the Complaint.

55. Alternatively, upon admission, the Plaintiffs and the Class entered into express form contracts with Defendants Florida Hospital and AHS whereby the Plaintiffs and the Class were required to agree to pay unspecified and undocumented charges for medical care set by Defendants in their sole discretion. Imputed in these contracts is the express and/or implied contractual

obligation by Defendants Florida Hospital and AHS that they would charge the Plaintiffs and the Class no more than a fair and reasonable charge for such medical care.

56. Similarly, by accepting and admitting the Plaintiffs and the Class into their hospitals for medical care, Defendants Florida Hospital and AHS undertook an express and/or implied contractual obligation to charge the Plaintiffs and the Class no more than a fair and reasonable charge for such medical care.

57. Defendants Florida Hospital and AHS breached their contractual obligations under these form contracts by charging the Plaintiffs and the Class the highest and full undiscounted cost for medical care. These charges are unfair, unreasonable, and bear no relation to the actual cost of providing such services.

58. The aforementioned breaches of contract have proximately caused the Plaintiffs and the Class economic injury and other damages.

COUNT THREE
BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

59. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in paragraphs 1 through 58 of the Complaint.

60. Defendants Florida Hospital and AHS' conduct as alleged above, also constitutes a breach of their duty of good faith and fair dealing.

61. The Plaintiffs and the Class are express and/or implied intended third party beneficiaries of Agreements between the United States Government and the State of Florida, wherein Defendants Florida Hospital and AHS agreed to provide mutually affordable medical care to the Plaintiffs and the Class in return for substantial federal, state, and local tax exemptions.

62. Alternatively, the Plaintiffs and the Class entered into an express and/or implied contractual relationship with Defendants Florida Hospital and AHS wherein each Plaintiff and Class member was admitted to a hospital comprising the Florida Hospital system or hospital owned and operated by AHS for the purpose of receiving medical care.

63. Defendants Florida Hospital and AHS breached their duty of good faith and fair dealing to the Plaintiffs and the Class by: failing to provide emergency room medical care to the Plaintiffs and the Class without regard to their ability to pay for such care; charging the Plaintiffs and the Class the highest and full undiscounted cost of medical care; charging the Plaintiffs and the Class a higher amount for medical services than they charged their insured patients for the same services; charging the Plaintiffs and the Class unreasonable charges for medical care; utilizing aggressive, abusive, and harassing collection practices such as collection lawsuits, liens, and garnishments to collect such outstanding grossly inflated medical debt from the Plaintiffs and the Class; allowing noncharitable for-profit entities to derive a profit from use of their tax-exempt hospitals; and upon information and belief, providing substantial discounts off the gross charges to their Board of Directors, to entities connected to their Board of Directors and to the Board of Directors of the various hospitals comprising the Defendants' systems.

64. Such unfair and bad faith conduct by Defendants Florida Hospital and AHS proximately caused economic injury and other damages to the Plaintiffs and the Class.

COUNT FOUR
BREACH OF CHARITABLE TRUST

65. Plaintiffs hereby incorporates and adopts by reference each and every allegation set forth in paragraphs 1 through 64 of the Complaint.

66. By accepting federal, state and local tax exemptions under 26 U.S.C. §501(c)(3) and Fla. Stat. §§196.192, 196.197, 199.183 and Fla. Const. Art. VII, § 3, Defendants Florida Hospital and AHS created and entered into a public charitable trust to provide mutually affordable medical care to their uninsured patients.

67. The Plaintiffs and the Class are the intended beneficiaries of this charitable trust created by virtue of Defendants' acceptance of federal, state and local tax exemptions.

68. Defendants have breached their charitable trust obligations to the Plaintiffs and the Class by: failing to provide emergency room medical care to the Plaintiffs and the Class without regard to their ability to pay for such medical care; charging the Plaintiffs and the Class the highest and full undiscounted cost of medical care; charging the Plaintiffs and the Class significantly more than their insured patients for the same medical services; failing to use their net assets and revenues in the billions of dollars to provide mutually affordable medical care to the Plaintiffs and the Class; utilizing aggressive, abusive and humiliating collection practices such as lawsuits, liens, and garnishments to collect such inflated and unreasonable medical debt from the Plaintiffs and the Class; allowing noncharitable for-profit entities to derive a profit from use of their tax-exempt hospitals; and upon information and belief, providing substantial discounts off the gross charges to their Board of Directors, to entities connected to their Board of Directors and to the Board of Directors of the various hospitals comprising the Defendants' systems. As a result of such conduct, the Plaintiffs and the Class have not received the benefit of the charitable trust created for their benefit.

69. The aforementioned breaches of charitable trust have caused the Plaintiffs and the Class economic injury and other damages.

COUNT FIVE
VIOLATIONS OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

70. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in paragraphs 1 through 69 of the Complaint.

71. The Florida Deceptive and Unfair Trade Practices Act, § 501.201 et seq., was enacted to prohibit and protect Florida citizens from deceptive, fraudulent and unfair conduct.

72. As alleged above, Defendants Florida Hospital's and AHS' conduct in charging the Plaintiffs and the Class the highest and full uncompensated cost for medical care and charging the Plaintiffs and the Class a higher amount than their insured patients for the same medical services, despite their charitable, nonprofit, tax exempt status, is in violation of the Florida Deceptive and Unfair Trade Practices Act because it is unfair, discriminatory, unconscionable, unethical, immoral, and oppressive. Such conduct is against public policy and has caused substantial economic injury to the Plaintiffs and the Class.

73. Moreover, as alleged above, Defendants Florida Hospital and AHS' aggressive, abusive, and harassing efforts to collect such inflated, undiscounted and uncompensated medical debt from the Plaintiffs and the Class through collection lawsuits, liens and garnishments, despite their charitable, nonprofit, tax exempt status, is unfair, discriminatory, unethical, immoral, and oppressive. Such conduct is also against public policy and has caused substantial economic injury to the Plaintiffs and the Class, including but not limited to bankruptcy and/or financial ruin.

74. Defendants Florida Hospital and AHS have knowingly induced Plaintiffs and the Class to use their facilities under the belief that Defendants Florida Hospital and AHS would operate their facilities as charity providers of health care for the uninsured. In doing so, Defendants Florida Hospital and AHS have knowingly made false representations in order to attract consumers.

75. These false representations have been made in the course of Defendants' businesses.

76. These false representations, as alleged above, have significantly impacted the public as both actual and potential consumers of Defendants Florida Hospital's and AHS' services.

77. These false representations have caused the Plaintiffs and the Class to suffer injuries in fact to a legally protected interest resulting in economic injuries and other damages.

COUNT SIX

VIOLATIONS OF THE EMERGENCY MEDICAL TREATMENT AND ACTIVE LABOR ACT

78. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in paragraphs 1 through 77 of the Complaint.

79. Under the Emergency Medical Treatment and Active Labor Act ("EMTALA"), 42 U.S.C. §1395 dd, a "participating hospital" must provide a medical screening examination to any individual that comes into its emergency room for an "emergency medical condition" in order to determine whether such emergency medical condition exists. If such an "emergency medical condition" does in fact exist, the "participating hospital" must provide sufficient medical examination and/or treatment necessary to stabilize the condition. The express intent of the EMTALA is to prohibit hospitals from denying or delaying emergency medical treatment to patients without medical insurance because of their uninsured status.

80. The hospitals comprising the Florida Hospital system and those owned and operated by AHS are "participating hospitals" as defined in 42 U.S.C. §1395 cc and §1395 dd.

81. Upon information and belief, before Defendants Florida Hospital and AHS 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 Defendants Florida Hospital and AHS

in full for unspecified and undiscounted medical charges. Defendants Florida Hospital and AHS would not provide emergency medical screening and/or treatment to the Plaintiffs and the Class unless they were able to pay for such medical care or until they agreed to sign a form contract guaranteeing payment in full for some medical care. By conditioning medical screening and/or treatment for “emergency medical conditions” on the Plaintiffs and the Class’ ability to pay and financial guarantees, and refusing to provide emergency medical screening and/or treatment until such guarantees were given, Defendant Florida Hospital and AHS violated the EMTALA, 42 U.S.C. §1395 dd. Such conduct in failing to provide emergency room medical care to the Plaintiffs and the Class without regard to their ability to pay for such medical care is also in violation of 26 U.S.C. §501(c)(3).

82. Such violations of 42 U.S.C. §1395 dd have proximately caused the Plaintiffs and the Class economic injury and other damages.

COUNT SEVEN
UNJUST ENRICHMENT/CONSTRUCTIVE TRUST

83. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in paragraphs 1 through 82 of the Complaint.

84. Defendants Florida Hospital and AHS have been unjustly enriched at the Plaintiff’s and the Class’ expense. As alleged above, Defendants Florida Hospital and AHS have failed to provide mutually affordable medical care to the Plaintiffs and the Class despite receiving millions of dollars in federal, state, and local tax exemptions for such purpose. Moreover, contrary to their charitable, nonprofit, tax exempt status, Defendants Florida Hospital and AHS have failed to utilize their substantial net assets and revenues, valued in excess of a billion dollars, to provide mutually affordable medical care to the Plaintiffs and the Class. Defendants Florida Hospital and AHS have

also realized profits in the millions of dollars by charging the Plaintiffs and the Class the highest and full undiscounted cost for medical care and by charging the Plaintiffs and the Class a higher amount for medical care than their insured patients.

85. The Plaintiff and the Class have suffered severe economic injury and other damages as a proximate consequence of Defendants Florida Hospital's and AHS' unjust enrichment.

86. As a result of Defendants Florida Hospital's and AHS' breach of contract along with their wrongful, unfair, discriminatory, abusive, and noncharitable conduct, they are in possession of tax savings, profits and other assets that it in good conscience and equity should not be entitled to retain. The Plaintiffs and the Class are therefore entitled to all damages resulting from Defendants Florida Hospital's and AHS' unjust enrichment, including but not limited to, the imposition of a constructive trust in the amount of Defendants Florida Hospital's and AHS' federal, state and local tax exemption savings. The Plaintiffs and the Class are also entitled to the imposition of a constructive trust on all profits Defendants Florida Hospital and AHS wrongfully obtained by charging the Plaintiffs and the Class the highest and full undiscounted cost of medical care. The Plaintiffs and the Class are further entitled to the imposition of a constructive trust on the difference between the amount Defendants Florida Hospital and AHS have charged the Plaintiffs and the Class and the amount they have charged their insured patients. Lastly, the Plaintiffs and the Class are, therefore, entitled to the imposition of a constructive trust on Defendants Florida Hospital's and AHS' net assets and revenues in an amount sufficient to provide to the Plaintiffs and the Class mutually affordable medical care pursuant to their charitable, nonprofit, tax exempt status.

COUNT EIGHT
CIVIL CONSPIRACY/CONCERT OF ACTION

87. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in paragraphs 1 through 86 of the Complaint.

88. Defendant AHA advised Florida Hospital and AHS and its nonprofit hospital members on its billing and collection practices concerning the uninsured through various internal memos and/or “white papers” for the purpose of increasing Florida Hospital’s and AHS’ profits and government reimbursements. In these internal memos, such as the December 17, 2003, memo entitled “Federal Regulations Hamper Hospitals Efforts to Assist Patients of Limited Means,” the AHA advised Florida Hospital and AHS and its member nonprofit hospitals that they were prevented from providing discounts to the Plaintiffs and the Class and were required to subject Plaintiffs and the Class to abusive collection practices. The AHA, through these internal memos, conspired and acted in concert with Florida Hospital and AHS to charge the Plaintiffs and the Class the highest undiscounted cost for medical care and aggressively collect such inflated medical debt through abusive lawsuits, liens and garnishments.

89. Moreover, the AHA actively conspired and acted in concert with Florida Hospital and AHS to wrongfully retain its tax exempt status and breach Florida Hospital’s and AHS’ hospitals’ contracts with the United States Government, State of Florida, and other local governmental bodies, the Plaintiffs and the Class by: advising Florida Hospital and AHS that it charge and collect undiscounted rates for medical care from the Plaintiffs and the Class; falsely representing to Secretary Thompson that Florida Hospital and AHS was required to charge and collect undiscounted rates for medical care from the Plaintiffs and the Class; and concealing and

misrepresenting the true amount of charity care Florida Hospital and AHS provided to the Plaintiffs and the Class.

90. Through such acts, the AHA also conspired and acted in concert with Florida Hospital and AHS to violate the Florida Deceptive and Unfair Trade Practices Act and to breach Florida Hospital's and AHS' duty of good faith and fair dealing to the Plaintiffs and the Class.

91. Such advice, assistance, false justification, concealments and misrepresentations have allowed and enabled Florida Hospital and AHS to: fail to provide emergency room medical care to the Plaintiffs and the Class without regard for their ability to pay for such medical care; charge the Plaintiffs and the Class the highest and full undiscounted cost of medical care; fail to provide mutually affordable medical care to the Plaintiffs and the Class; charge the Plaintiffs and the Class substantially more than its insured patients for the same medical services; fail to use its net assets and reserves in the billions of dollars to provide mutually affordable health care to the Plaintiffs and the Class; and engage in aggressive, abusive, and harassing collection practices such as lawsuits, liens, and garnishments to collect such inflated and unreasonable medical debt from the Plaintiffs and the Class.

92. Such acts of conspiracy and concert in action by the AHA have proximately caused Florida Hospital and AHS to be unjustly enriched at the Plaintiffs' and Class' expense and have also proximately caused the Plaintiffs and the Class economic injury and other damages.

COUNT NINE
AIDING AND ABETTING

93. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in paragraphs 1 through 92 of the Complaint.

94. Defendant AHA, through its internal memos and other advisory assistance, aided and abetted Florida Hospital and AHS in charging the Plaintiffs and the Class the full undiscounted cost for medical care and in seeking to collect such grossly inflated medical debt from the Plaintiffs and the Class through abusive collection lawsuits, liens and garnishments.

95. The AHA aided and abetted Florida Hospital's and AHS' breach of its tax exempt contracts with the United States Government, State of Florida, other local governmental bodies, the Plaintiffs and the Class by advising Florida Hospital and AHS that federal regulations prevented it from providing discounts to the Plaintiffs and the Class and required it to aggressively collect such grossly inflated medical debt from the Plaintiffs and the Class through collection lawsuits, liens and garnishments.

96. The AHA also aided and abetted Florida Hospital's and AHS' breaches of contract by falsely justifying and representing to Secretary Thompson and other government entities that the Medicare regulations prevented Florida Hospital and AHS from providing discounts to the Plaintiffs and the Class and required Florida Hospital and AHS to aggressively collect such grossly inflated medical debt from the Plaintiffs and the Class through collection lawsuits, liens and garnishments.

97. Defendant AHA further aided and abetted Florida Hospital's and AHS' breaches of contract by falsely representing and concealing the true cost of charity care provided by Florida Hospital and AHS' hospitals to the Plaintiffs and the Class.

98. Through these acts, the AHA also aided and abetted Florida Hospital's and AHS' violations of the Florida Deceptive and Unfair Trade Practices Act and breach of their duty of good faith and fair dealing toward the Plaintiffs and the Class.

99. Such substantial assistance by the AHA allowed and enabled Florida Hospital and AHS to: fail to provide emergency room medical care to the Plaintiffs and the Class without regard for their ability to pay for such medical care; charge the Plaintiffs and the Class the highest and full undiscounted cost of medical care; fail to provide mutually affordable medical care to the Plaintiffs and the Class; charge the Plaintiffs and the Class substantially more than its insured patients for the same medical services; fail to use its net assets and revenues in the billions of dollars to provide mutually affordable health care to the Plaintiffs and the Class; and engage in aggressive, abusive, and harassing collection practices such as lawsuits, liens, and garnishments to collect such inflated and unreasonable medical debt from the Plaintiffs and the Class.

100. Defendant AHA's substantial assistance has proximately caused Florida Hospital and AHS to be unjustly enriched at the Plaintiffs' and Class' expense and has also proximately caused the Plaintiffs and the Class economic injury and other damages.

COUNT NINE
INJUNCTIVE/DECLARATORY RELIEF

101. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in paragraphs 1 through 100 of the Complaint.

102. As a result of Defendants' wrongful, unfair, discriminatory, and unconscionable charging and collection practices, Plaintiffs and the Class have suffered and, unless abated, will continue to suffer severe and irreparable harm and injury.

103. Accordingly, Plaintiffs and the Class respectfully request that this Court enter a preliminary and/or permanent injunction, in accordance with FRCP 23(b)(2), ordering Defendants Florida Hospital and AHS to cease and desist: charging the Plaintiffs and the Class the highest and full undiscounted cost of medical care; charging the Plaintiffs and the Class a higher amount for

medical services than their insured patients for the same services; and utilizing aggressive, abusive, and harassing collection practices such as collection lawsuits, liens, and garnishments to collect outstanding grossly inflated medical debt from the Plaintiffs and the Class.

104. Plaintiffs and the Class also seek a prospective Order from the Court, in accordance with FRCP 26(b)(2), requiring Defendants Florida Hospital and AHS: to provide mutually affordable medical care to the Plaintiffs and the Class; to charge the Plaintiffs and the Class no more for medical services than it charges their insured patients, and to cease their attempts to collect outstanding medical debt from the Plaintiffs and the Class until they have complied with a 180-day waiting period and attempted in good faith to settle such outstanding debt with the Plaintiffs and the Class through a graduated payment plan or other means.

VIII. **DAMAGES**

105. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in paragraphs 1 through 104 of the Complaint.

106. As a direct and proximate result of Defendants Florida Hospital and AHS' breach of contract, breach of duty of good faith and fair dealing, violations of EMTALA, violations of the Florida Unfair Practices Act, conspiracy and unjust enrichment,. and Defendant AHA's aiding and abetting and conspiratorial practices, the Plaintiffs and the Class have suffered economic injury and damages.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs requests that upon a trial of this action, judgment will be entered against Defendants for:

- 1) all economic, monetary, actual, consequential, and compensatory damages caused by the conduct of Defendants Florida Hospital and AHS;

- 2) a constructive trust to be imposed on: Defendants' federal, state and local tax exempt savings; Defendants' profits obtained from charging the Plaintiff and the Class the highest and full undiscounted cost for medical care; and Defendants' net assets and revenues in an amount sufficient to provide the Plaintiff and the class mutually affordable medical care; and
- 3) injunctive and/or declaratory relief.

Respectfully submitted, this the 22nd day of July, 2004.

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JURY DEMAND

***THE PLAINTIFF DEMANDS TRIAL BY STRUCK JURY ON ALL ISSUES
HEREIN.***

s/ E. Kirk Wood
Of Counsel

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2004, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system. I certify that I mailed the foregoing pleading and the notice of electronic filing by first class mail, postage prepaid to Defendants Florida Hospital Healthcare System, Inc. and Adventist Health Systems/Sunbelt, Inc. I further certify that I mailed the foregoing pleading and notice of electronic filing by Certified Mail to Defendant American Hospital Association. The foregoing pleadings were mailed to Defendants at the following addresses:

Florida Hospital Healthcare System, Inc. d/b/a Florida Hospital
601 East Rollins Street
Orlando, Florida

Adventist Health Systems/Sunbelt, Inc.

111 North Orlando Avenue
Winter Park, Florida 32789

American Hospital Association

c/o Registered Agent
James A. Henderson
One North Franklin Street
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s/ E. Kirk Wood

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