

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

ROBERT C. SCHMITT, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

PROTESTANT MEMORIAL MEDICAL
CENTER, INC., d/b/a Memorial Hospital,
AMERICAN HOSPITAL ASSOCIATION,
and JOHN DOES 1-10,

Defendants.

Serve Registered Agent:

Protestant Memorial Medical Center
c/o Harry R. Maier, Registered Agent
4500 Memorial Drive
Belleville, IL 62223-5399

American Hospital Association
c/o James A. Henderson, Registered Agent
1 North Franklin Street, Suite 2700
Chicago, IL 60606

Civil No. _____

Class Action

Jury Trial Demanded

COMPLAINT

Plaintiff Robert C. Schmitt, on behalf of himself and all others similarly situated, files this Complaint, seeking monetary damages, injunctive and other equitable relief against Defendants Protestant Memorial Medical Center, Inc., d/b/a Memorial Hospital (“Memorial”), the American Hospital Association (“AHA”), and John Does 1 through 10 and hereby alleges the following on information and belief.

INTRODUCTION

1. Memorial holds itself out as a charitable non-profit entity in order to operate free from tax. Memorial promises the government – and by extension its patients – that Memorial does and will operate on a non-profit basis and provide health care services to all patients regardless of their ability to pay. As a result, Memorial receives millions of dollars each year in federal, state and local tax exemptions.

2. In reality, Memorial is anything but charitable. While Memorial promises to provide charity care to the uninsured poor, Memorial engages in a pattern and practice of charging unreasonable, excessive, and inflated rates for medical care to its uninsured patients who are all too often impoverished members of the community with little or no means to pay. Consequently, these uninsured patients are generally unable to pay these inflated and unreasonable charges. Moreover, Memorial, as a self-proclaimed charity, also pursues aggressive collection practices which often result in lawsuits against uninsured patients. These aggressive collection practices violate Memorial's tax exemption agreements with the United States Government, the State of Illinois, and St. Clair County.

3. Because of the contractual promises made to federal, state, and local governments, Memorial is contractually bound to charge its uninsured patients only a reasonable cost for medical care. Plaintiff and the class are the third party beneficiaries of these agreements. The class also includes uninsured patients who, regardless of their financial status, were charged unreasonable, excessive, and inflated rates for medical care.

PARTIES

4. Plaintiff, Robert C. Schmitt, is a resident of St. Clair County, Illinois.

5. Defendant Memorial is a non-profit Illinois corporation with its principal place of business at 4500 Memorial Drive, Belleville, Illinois 62223. Plaintiff was treated at Memorial.

6. Defendant American Hospital Association is the national trade association for the nonprofit hospital industry, and serves as the representative for Memorial and the AHA's other nonprofit hospital members.

7. The various other Defendants, designated John Does 1 through 10, are certain unknown and unnamed persons and/or entities who may be liable for the claims asserted herein, who include, but are not limited to, agents, servants, employees, representatives, affiliates, parents, subsidiaries, joint tortfeasors, tortfeasors, contractors, co-conspirators, joint adventures, partners, stockholders, and any other person or entity of the named Defendants and/or any other persons who may be liable to Plaintiff for the claims asserted herein.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 1367, because Plaintiff's claims arise out of a federal contract between Memorial and the United States Government in which Memorial agreed to provide mutually affordable medical care to its 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 28 U.S.C. § 1340 because Plaintiff's claims arise out of Memorial's duties and obligations under 26 U.S.C. § 501(c)(3).

9. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b)(1).

FACTS

10. Memorial represents itself as a Belleville area based tax exempt, charitable, nonprofit hospital. Memorial is one of the largest not-for-profit health providers in the Metro-East Illinois area. In fiscal year 2002 alone according to published information Memorial had

net assets of over \$142 million and revenue of over \$153 million. The Internal Revenue Service has recognized Memorial as a tax exempt organization under Internal Revenue Code Section 501(c)(3). This accumulation of wealth was made possible in large part due to the federal, state and local tax exemptions enjoyed by Memorial as a “non-profit” entity.

11. Memorial operates a 341 bed facility which makes it one of the largest healthcare providers in the Metro-East Illinois area. As such, it is also one of the largest healthcare providers to the uninsured in the Metro-East Illinois area.

12. Memorial entered into express and/or implied agreements with the United States Government, the State of Illinois, and St. Clair County to provide mutually affordable medical care to all of its patients in return for substantial tax exemptions. An express and/or implied contractual relationship was thereby created between Memorial and the United States Government, the State of Illinois, and St. Clair County, to accomplish such purpose. Memorial’s uninsured patients during the relevant time period were the express and/or implied intended third party beneficiaries of such agreements.

13. Memorial applied for and has received a federal income tax exemption as a purported “charitable” institution under 26 U.S.C. § 501(c)(3). Under § 501(c)(3), Memorial is required to operate “exclusively” in furtherance of a charitable purpose, with no part of its operations attributable directly or indirectly to any noncharitable commercial purpose and with no part of its earnings inuring to the benefit of any private individual or entity. By accepting this favorable tax exemption, Memorial explicitly and/or implicitly agreed to (1) operate exclusively for charitable purposes; (2) to provide mutually affordable medical care to all of its uninsured patients at reasonable rates; (3) not to charge its uninsured patients the highest and full undiscounted cost for medical care; (4) not to charge its uninsured patients a higher rate for

medical care than its insured patients; and (5) not to pursue outstanding medical debt from its uninsured patients through aggressive collection efforts including lawsuits.

14. Memorial also receives state and local tax exemptions from the State of Illinois and St. Clair County. By accepting these favorable state and local tax exemptions, Memorial explicitly and/or implicitly agreed to (1) operate exclusively for charitable purposes; (2) to provide mutually affordable medical care to all of its uninsured patients at reasonable rates; (3) not to charge its uninsured patients the highest and full undiscounted cost for medical care; (4) not to charge its uninsured patients a higher rate for medical care than its insured patients; and (5) not to pursue outstanding medical debt from its uninsured patients through aggressive collection efforts including lawsuits.

15. Despite its favorable tax exempt status and its substantial revenues and assets Memorial has breached its agreements with the United States Government, the State of Illinois, and St. Clair County, by charging its uninsured patients unreasonable and excessive fees for medical care and by engaging in aggressive efforts to collect such medical debt from its uninsured patients including bringing collection lawsuits.

16. Memorial's uninsured patients have not received the benefit of the agreements between Memorial and the United States Government, the State of Illinois, and St. Clair County. These uninsured patients primarily consist of the working class who do not qualify for Medicaid, Illinois Public Aid, or charity care but cannot afford private health insurance and/or cannot obtain health insurance through their employers.

17. Memorial sets its charges for medical services at patently unreasonable and excessive rates. While Memorial has pre-admission contracts with private insurance companies and governmental third party payors like Medicare, Medicaid, and Illinois Public Aid that only

reasonable amounts will be collected and/or attempted to be collected from their insured, all of Memorial's uninsured patients are charged grossly inflated charges well above reasonable rates, which can be as large as twice as much charged to the insured for the same service. Memorial realizes substantial revenues from this discriminatory charging practice.

18. Before Memorial admits any patient, including its uninsured patients, into its hospitals and/or emergency rooms for emergency medical care, it requires its patients to sign a form contract containing the following provision promising to pay Memorial in full for unspecified and undocumented charges for medical care that are set by Memorial in its sole discretion:

“For all services ordered by my physicians, dentists, allied health professionals, my family, or me, I agree to pay Memorial its charges for these services and to cooperate with Memorial in obtaining payment of such charges by any third party liable to Memorial for payments on my behalf. Should it be necessary for all or any part of these charges to be referred to an attorney for collection, the undersigned agrees to pay reasonable attorney's fees and collection expenses.”

19. Moreover, not only does Memorial charge its uninsured patients the highest rates for medical care, which most cannot afford to pay, it has also engaged in the uniform pattern and practice of aggressively pursuing such debt through collection efforts such as collection lawsuits.

20. On or about September 11, 2003, Plaintiff Robert C. Schmitt, entered Memorial's emergency room for injuries sustained to his right knee. In accordance with its policy described herein, Memorial made Plaintiff sign a series of forms including an obligation to pay all medical expenses (attached hereto as “Exhibit A”). Memorial subsequently billed Plaintiff an excessive and unreasonable charge for these services and employed a collection agency to pursue collection of approximately \$3,757.00.

21. The AHA, the self-proclaimed representative of Memorial and the nonprofit hospital industry, provides substantial assistance and guidance to Memorial and the nonprofit hospital industry on its billing and collection practices for uninsured patients.

22. 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.”

23. The AHA, through internal memos called “white papers” and other sponsored publications, provides guidance to Memorial and the nonprofit hospital industry on its billing and collection practices for uninsured patients, including promoting publications such as “Seven Strategies to Improve Your Bottom Line.” In these sponsored publications, the AHA encourages Memorial and its nonprofit hospital members to inflate its chargemaster prices, which only Memorial’s insured patients are charged. These inflated chargemaster prices have the intended effect of increasing Memorial’s outlier payment reimbursements under the DSH and Medicare reimbursement programs.

24. On December 17, 2003, the AHA sent out a “white paper” entitled “Federal Regulations Hamper Hospitals’ Efforts to Assist Patients of Limited Means” to Memorial and its 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.

25. The AHA actively conceals and misrepresents from the government and regulatory agencies the amount of charity care provided by Memorial 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.”

26. The AHA also falsely justifies to the public and governmental entities the reasoning for the billing and collection practices employed by Memorial 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 admitted its nonprofit hospital members charge its uninsured patients the full price for medical care, falsely represented to the Secretary that Memorial and its member nonprofit hospitals were required by the federal Medicare regulations to charge and aggressively collect such grossly inflated medical expenses.

27. 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.

CLASS ACTION ALLEGATIONS

28. Plaintiff brings this class action pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3) on behalf of a “Class” consisting of all persons who received any form of healthcare treatment at Memorial from January 1, 1995 through the present and who were uninsured at the time of treatment.

29. 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.

30. Plaintiff is a member of the Class described above.

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

32. Plaintiff’s claims are typical of the claims of the Class because he sustained damages as a result of Memorial’s excessive and unreasonable discriminatory charging and/or collection practices seeking the full undiscounted cost of medical care.

33. There are numerous questions of law and fact common to the Class which predominate over any questions affecting only individual Class members, including but not limited to the following:

- a. whether Memorial entered into express and/or implied agreements with the United States Government, the State of Illinois, and St. Clair County, that in return for substantial tax exemptions, to operate exclusively for charitable purposes; to provide mutually affordable medical care to all of its uninsured patients at reasonable rates; 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; and not to pursue outstanding medical debt from its uninsured patients through aggressive collection efforts including lawsuits;

- b. whether Memorial breached said agreements with the U.S. Government, the State of Illinois, and St. Clair County, by failing to operate exclusively for charitable purposes; failing to provide mutually affordable medical care to all of its uninsured patients at reasonable rates; 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; and not to pursue outstanding medical debt from its uninsured patients through aggressive collection efforts including lawsuits;
- c. whether Plaintiff and the Class are express and/or implied intended third party beneficiaries to said agreements between Memorial and the United States Government, the State of Illinois, and St. Clair County;
- d. whether Memorial charged Plaintiff and the Class the full undiscounted cost of medical care in violation of its charitable, nonprofit, tax exempt status;
- e. whether Memorial charged Plaintiff and the Class unreasonable amounts for medical care;
- f. whether Memorial profited by charging Plaintiff and the Class the highest rates for medical care;
- g. whether Memorial has utilized aggressive collection practices including lawsuits to collect medical payments from Plaintiff and the Class in violation of its charitable, nonprofit, tax exempt status;
- h. whether Memorial breached its duty of good faith and fair dealing to Plaintiff and the Class;
- i. whether Memorial's actions as alleged in this Complaint violated the Illinois Consumer Fraud and Deceptive Business Practices Act;
- j. whether Memorial has been unjustly enriched at Plaintiff's and the Class' expense;
- k. whether Memorial should be enjoined from continuing its unfair and discriminatory conduct;
- l. whether AHA aided and abetted Memorial in charging Plaintiff and the Class unreasonable and excessive rates;
- m. whether AHA aided and abetted in charging the Plaintiff and the Class the full undiscounted cost for medical care and in seeking to collect such grossly inflated medical debt from the Plaintiff and the Class through aggressive collection efforts including lawsuits;

- n. whether AHA aided and abetted Memorial's breach of its tax exempt contracts;
- o. whether the AHA advised Memorial on its billing and collection practices concerning the uninsured through various internal memos and/or "white papers;"
- p. whether the AHA is guilty of civil conspiracy; and
- q. whether Defendants are liable to Plaintiff and the Class in this action, as alleged herein.

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

32. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff has no claim antagonistic to those of the Class. Plaintiff has retained competent and experienced counsel in complex class actions, and mass tort and products liability litigation. Counsel is committed to the vigorous prosecution of this action.

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

34. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

35. 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, Defendants will retain the benefits of their wrongdoing.

36. 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.

37. Class certification is also appropriate pursuant to Rule 23(b)(2) because, as set forth herein, Defendants have acted and/or refused to act on grounds generally applicable to Plaintiff and the Class, thereby warranting appropriate injunctive and/or declaratory relief.

COUNT ONE

BREACH OF CONTRACT (Third Party Beneficiary)

38. Plaintiff incorporates the allegations contained in the preceding paragraphs.

39. Memorial, as a purported charitable entity 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 it would: (1) operate exclusively for charitable purposes; (2) to provide mutually affordable medical care to all of its uninsured patients at reasonable rates; (3) not to charge its uninsured patients the highest and full undiscounted cost for medical care; (4) not to charge its uninsured patients a higher rate for medical care than its insured patients; and (5) not to pursue outstanding medical debt from its uninsured patients through aggressive collection efforts including lawsuits.

40. Memorial, as a purported institution of public charity, also entered into express and/or implied agreements with the State of Illinois and St. Clair County, that in return for substantial state tax exemptions, it would: (1) operate exclusively for charitable purposes; (2) provide mutually affordable medical care to all of its uninsured patients at reasonable rates; (3) not charge its uninsured patients the highest and full undiscounted cost for medical care; (4) not

charge its uninsured patients a higher rate for medical care than its insured patients; and (5) not pursue outstanding medical debt from its uninsured patients through aggressive collection efforts including lawsuits.

41. Plaintiff and the Class are the express and/or implied intended third party beneficiaries of Memorial's agreements with the United States Government, the State of Illinois, and St. Clair County.

42. Memorial breached the above-mentioned agreements with the United States Government, the State of Illinois and St. Clair County, by charging Plaintiff and the Class unreasonable, excessive, and inflated, the highest and full undiscounted cost of medical care; charging Plaintiff and the Class significantly more than its insured patients for the same medical services; and utilizing aggressive collection practices such as lawsuits to collect such inflated and unreasonable medical debt from Plaintiff and the Class. As a result of such conduct, Plaintiff and the Class have not received the benefit of Memorial's agreements with the United States Government, the State of Illinois, and St. Clair County. Such conduct is also contrary to Memorial's purported charitable purpose and its nonprofit status.

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

COUNT TWO

BREACH OF CONTRACT

44. Plaintiff incorporates the allegations contained in the preceding paragraphs.

45. Alternatively, upon admission, Plaintiff and the Class entered into express form contracts with Memorial whereby Plaintiff and the Class were required to agree to pay unspecified and undocumented charges for medical care set by Memorial in its sole discretion.

Imputed in these contracts is the express and/or implied contractual obligation by Memorial that it would charge Plaintiff and the Class no more than a fair and reasonable charge for such medical care.

46. Similarly, by accepting and admitting Plaintiff and the Class for medical care, Memorial undertook an express and/or implied contractual obligation to charge Plaintiff and the Class no more than a fair and reasonable charge for such medical care.

47. Memorial breached its contractual obligations under these form contracts by charging Plaintiff and the Class the highest and full undiscounted cost for medical care. These charges are unreasonable, excessive, and inflated, and bear no relation to the actual cost of providing such services.

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

COUNT THREE

BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

49. Plaintiff incorporates the allegations contained in the preceding paragraphs.

50. Memorial's conduct as alleged above, also constitutes a breach of its duty of good faith and fair dealing.

51. Plaintiff and the Class are express and/or implied intended third party beneficiaries of agreements between the United States Government, the State of Illinois, and St. Clair County, wherein Memorial agreed to provide mutually affordable medical care to Plaintiff and the Class in return for substantial federal, state, and local tax exemptions.

52. Alternatively, Plaintiff and the Class entered into an express and/or implied contractual relationship with Memorial wherein Plaintiff and Class members were admitted for the purpose of receiving medical care.

53. Memorial breached its duty of good faith and fair dealing to Plaintiff and the Class by: (1) not operating exclusively for charitable purposes; (2) failing to provide mutually affordable medical care to all of its uninsured patients at reasonable rates; (3) charging its uninsured patients the highest and full undiscounted cost for medical care; (4) charging its uninsured patients a higher rate for medical care than its insured patients; and (5) pursuing outstanding medical debt from its uninsured patients through aggressive collection efforts including lawsuits.

54. Such unfair and bad faith conduct by Memorial proximately caused economic injury and other damages to Plaintiff and the Class.

COUNT FOUR

BREACH OF CHARITABLE TRUST

55. Plaintiff incorporates the allegations contained in the preceding paragraphs.

56. By accepting federal, state and local tax exemptions under 26 U.S.C. § 501(c)(3) Memorial created and entered into a public charitable trust to provide mutually affordable medical care to its uninsured patients.

57. Plaintiff and the Class are the intended beneficiaries of this charitable trust created by virtue of Memorial's acceptance of federal, state and local tax exemptions.

58. Memorial has breached its charitable trust obligations to Plaintiff and the Class by: (1) charging Plaintiff and the Class the highest and full undiscounted cost of medical care;

(2) charging Plaintiff and the Class significantly more than its insured patients for the same medical services; and (3) utilizing aggressive collection practices such as lawsuits to collect such inflated and unreasonable medical debt from Plaintiff and the Class. As a result of such conduct, Plaintiff and the Class have not received the benefit of the charitable trust created for their benefit.

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

COUNT FIVE

VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE PRACTICES ACT

60. Plaintiff incorporates the allegations contained in the preceding paragraphs.

61. By engaging in the unlawful conduct alleged herein, Memorial has violated the Illinois Consumer Fraud and Deceptive Business Practices Act of 1977 (“ICFA”), 815 ILCS 50511 *et seq.*

62. As alleged above, Memorial’s conduct in charging Plaintiff and the Class the highest and full uncompensated cost for medical care and its charging Plaintiff and the Class a higher amount than its insured patients for the same medical services, despite its charitable, nonprofit, tax exempt status, is in violation of the TCPA because it is unfair, discriminatory, and unconscionable. Such conduct is against public policy and has caused substantial economic injury to Plaintiff and the Class.

63. Moreover, as alleged above, Memorial’s aggressive efforts to collect such inflated, undiscounted and uncompensated medical debt from Plaintiff and the Class through collection practices, including lawsuits despite its charitable, nonprofit, tax exempt status, is

unfair, discriminatory, and unconscionable. Such conduct is also against public policy and has caused substantial economic injury to Plaintiff and the Class.

64. Memorial's TCPA violations include, without limitation, the following:
- a. Representing that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law;
 - b. Failing to disclose that a charge for the servicing of goods in whole or in part is based on a predetermined rate or charge, or guarantee or warranty, instead of the value of the services actually performed; and
 - c. Engaging in other acts, which are deceptive to Illinois consumers.

65. Plaintiff is a consumer within the meaning of the Illinois Consumer Fraud and Deceptive Business Practices Act.

66. The uniform and common course of conduct described above constitutes unfair or deceptive business practices predominately and substantially affecting trade and commerce in the State of Illinois.

COUNT SIX

UNJUST ENRICHMENT/ CONSTRUCTIVE TRUST

67. Plaintiff incorporates the allegations contained in the preceding paragraphs.

68. Memorial has been unjustly enriched at the expense of the Plaintiff and the Class. Memorial has failed to provide mutually affordable medical care to Plaintiff and the Class despite receiving federal, state, and local tax exemptions for such purpose. Moreover, contrary to its charitable, nonprofit, tax exempt status, Memorial has also realized profits in the millions of dollars by charging Plaintiff and the Class the highest and full undiscounted cost for medical

care and by charging Plaintiff and the Class a higher amount for medical care than its insured patients.

69. Plaintiff and the Class have suffered severe economic injury and other damages as a proximate consequence of Memorial's unjust enrichment.

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

COUNT SEVEN

CIVIL CONSPIRACY/CONCERT OF ACTION

71. Plaintiff incorporates the allegations contained in the preceding paragraphs.

72. The AHA advised Memorial 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 Memorial’s 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 Memorial and its member nonprofit hospitals that they were prevented from providing discounts to the Plaintiff and the Class and were required to subject Plaintiff and the Class to abusive collection practices. The AHA, through these internal memos, conspired and acted in concert with Memorial to charge the Plaintiff and the Class the highest undiscounted cost for medical care and aggressively collect such inflated medical debt through lawsuits.

73. Moreover, the AHA actively conspired and acted in concert with Memorial to wrongfully retain its tax exempt status and breach Memorial’s contracts with the United States Government, State of Illinois, and St. Clair County, the Plaintiff and the Class by: advising Memorial that it charge and collect undiscounted rates for medical care from the Plaintiff and the Class; falsely representing to Secretary Thompson that Memorial was required to charge and collect undiscounted rates for medical care from the Plaintiff and the Class; and concealing and misrepresenting the true amount of charity care Memorial provided to the Plaintiff and the Class.

74. Through such acts, the AHA also conspired and acted in concert with Memorial to violate the Illinois Consumer Fraud and Deceptive Business Practices Act and to breach Memorial’s duty of good faith and fair dealing to the Plaintiff and the Class.

75. Such advice, assistance, false justification, concealments and misrepresentations have allowed and enabled Memorial to: operate exclusively for charitable purposes; to provide mutually affordable medical care to all of its uninsured patients at reasonable rates; 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; and not to pursue

outstanding medical debt from its uninsured patients through aggressive collection efforts including lawsuits.

76. Such acts of conspiracy and concert in action by the AHA have proximately caused Memorial to be unjustly enriched at the Plaintiff's and Class' expense and have also proximately caused the Plaintiff and the Class economic injury and other damages.

COUNT EIGHT

AIDING AND ABETTING

77. Plaintiff incorporates the allegations contained in the preceding paragraphs.

78. The AHA, through its internal memos and other advisory assistance, aided and abetted Memorial in charging the Plaintiff and the Class the full undiscounted cost for medical care and in seeking to collect such grossly inflated medical debt from the Plaintiff and the Class through abusive collection lawsuits.

79. The AHA aided and abetted Memorial's breach of its tax exempt contracts with the United States Government, State of Illinois, St. Clair County, the Plaintiff and the Class by advising Memorial that federal regulations prevented it from providing discounts to the Plaintiff and the Class and required it to aggressively collect such grossly inflated medical debt from the Plaintiff and the Class through practices including collection lawsuits.

80. The AHA also aided and abetted Memorial's breaches of contract by falsely justifying and representing to Secretary Thompson and other government entities that the Medicare regulations prevented Memorial from providing discounts to the Plaintiff and the Class and required Memorial to aggressively collect such grossly inflated medical debt from the Plaintiff and the Class through collection lawsuits.

81. The AHA further aided and abetted Memorial's breaches of contract by falsely representing and concealing the true cost of charity care provided by Memorial to the Plaintiff and the Class.

82. Through these acts, the AHA also aided and abetted Memorial's violations of the Illinois Consumer Fraud and Deceptive Business Practices Act and Memorial's breach of its duty of good faith and fair dealing toward the Plaintiff and the Class.

83. Such substantial assistance by the AHA have allowed and enabled Memorial to: operate exclusively for charitable purposes; to provide mutually affordable medical care to all of its uninsured patients at reasonable rates; 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; and not to pursue outstanding medical debt from its uninsured patients through aggressive collection efforts including lawsuits.

84. The AHA's substantial assistance has proximately caused Memorial to be unjustly enriched at the Plaintiff's and Class' expense and has also proximately caused the Plaintiff and the Class economic injury and other damages.

COUNT NINE

INJUNCTIVE/DECLARATORY RELIEF

85. Plaintiff incorporates the allegations contained in the preceding paragraphs.

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

87. Accordingly, Plaintiff and the Class respectfully request that this Court enter a preliminary and/or permanent injunction, in accordance with FRCP 23(b)(2), ordering Memorial

to cease and desist: charging the Plaintiff and the Class unreasonable rates for medical care; charging the Plaintiff and the Class a higher amount for medical services than its insured patients for the same services; and utilizing aggressive collection practices such as collection lawsuits to collect outstanding grossly inflated medical debt from the Plaintiff and the Class.

88. Plaintiff and the Class also seek a prospective Order from the Court, in accordance with FRCP 26(b)(2), requiring Memorial: to provide affordable medical care to the Plaintiff and the Class; to charge Plaintiff and the Class no more for medical services than it charges its insured patients; to charge its uninsured patients reasonable rates for medical care; and to cease its attempts to collect outstanding medical debt from Plaintiff and the Class until it has complied with a 180-day waiting period and attempted in good faith to settle such outstanding debt with Plaintiff and the Class through a graduated payment plan or other means.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Memorial as follows:

- a. For an order certifying the Class and appointing Plaintiff and his counsel to represent the Class;
- b. Finding Defendants liable under the applicable causes of action pleaded above;
- c. For compensatory damages for Plaintiff and the Class;
- d. For an order enjoining Memorial from continuing the misconduct described herein;
- e. A constructive trust to be imposed on Memorial's (1) local tax exempt savings; (2) profits obtained from charging Plaintiff and the Class the highest and full undiscounted cost for medical care; and (3) net assets and revenues in an amount sufficient to provide Plaintiff and the class mutually affordable medical care;

- f. For injunctive and/or declaratory relief;
- g. For attorneys' fees and costs incurred in the pursuit of their action; and
- h. For an order awarding such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff respectfully demands a trial by jury.

Dated: _____

Respectfully submitted,

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