IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF PUERTO RICO

HUMANA HEALTH OF PUERTO RICO, INC.,

Plaintiff,

v.

JUAN L. VILARO, et al,

Defendants.

Civil No. 12-1445 (GAG)

OPINION AND ORDER

Humana Health of Puerto Rico, Inc. ("Plaintiff") brings this action against Juan L. Vilaro, Francis M. Vazques Roura, Praxedes E. Alvarez, Jorge Grillasca, Rafael Garcia Nieves, Angel B. Rivera Santos, Daniel Perez Brisebois, and Cosme D. Santos (collectively "Defendants") for violations of federal and state antitrust laws and state tort and contract laws. Plaintiff claims Defendants violated Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, and the Puerto Rican Antitrust Act, P.R. LAWS ANN. tit. 10, §§ 257 *et seq*. Plaintiff also alleges tortious interference with contractual relations, contract breach in the harm of third parties, and general negligence under Article 1802 of the Puerto Rico Civil Code, P.R. LAWS ANN. tit. 31, § 5141. Presently before the court is Defendants' motion to dismiss (Docket No. 34). After reviewing the parties' submissions and the pertinent law, the court **DENIES** Defendants' motion to dismiss. All of Plaintiff's claims remain before the court.

I. Standard of Review

"The general rules of pleading require a short and plain statement of the claim showing that the pleader is entitled to relief." Gargano v. Liberty Intern. Underwriters, Inc., 572 F.3d 45, 48 (1st Cir. 2009) (citations omitted) (internal quotation marks omitted). "This short and plain statement need only 'give the defendant fair notice of what the . . . claim is and the grounds upon which it

rests.'" Id. (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)).

Under Rule 12(b)(6), a defendant may move to dismiss an action against him for failure to state a claim upon which relief can be granted. See FED.R.CIV.P. 12(b)(6). To survive a Rule 12(b)(6) motion, a complaint must contain sufficient factual matter "to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570. The court must decide whether the complaint alleges enough facts to "raise a right to relief above the speculative level." Id. at 555. In so doing, the court accepts as true all well-pleaded facts and draws all reasonable inferences in the plaintiff's favor. Parker v. Hurley, 514 F.3d 87, 90 (1st Cir. 2008). However, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. (citing Twombly, 550 U.S. at 555). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged--but it has not 'show[n]'--'that the pleader is entitled to relief.'" Iqbal, 556 U.S. at 679 (quoting FED.R.CIV.P. 8(a)(2)).

II. Discussion

Defendants' motion to dismiss focuses only on whether Plaintiff sufficiently pleads an antitrust injury. (See Docket No. 34 at 7-10.) Plaintiff bears the burden of alleging an antitrust injury. See Sterling Merch., Inc. v. Nestle, S.A., 656 F.3d 112, 121 (1st Cir. 2011). "Antitrust injury is 'injury of the type the antitrust laws were intended to prevent and that flows from that which makes defendants' acts unlawful.'" Id. (quoting Brunswick Corp. v. Pueblo Bowl–O–Mat, Inc., 429 U.S. 477, 489 (1977)). Section 1 of the Sherman Act prohibits "every contract, combination . . . or conspiracy, in restraint of trade." 15 U.S.C. § 1. That language "establishes two prerequisites . . . [f]irst, the plaintiff must show concerted action between two or more separate parties . . .[and second,] the parties must show that such action unreasonably restrains trade." Podiatrist Ass'n v. La Cruz Azul de P.R., Inc., 332 F.3d 6, 12 (1st Cir. 2003).

The facts alleged in the complaint sufficiently raise the right to relief beyond a speculative level. Plaintiff satisfies Twombly and Iqbal by alleging antitrust infringement in paragraphs 22-28,

and 30, and the consequent damages in paragraphs 31, 38-40 and 51-57 of the complaint. (See Docket No. 1.) Plaintiff asserts Defendants colluded to price-fix and boycott. (Id.) Plaintiff specifically sets forth that Defendants included one another in attempted negotiations with Plaintiff via email, copied one another on each other's notifications of termination to Plaintiff, and jointly provided a table setting forth proposed, higher rates required as a condition to continue providing services to certain patients. (See Docket 1 at ¶¶ 22-28, 30.) Such actions ostensibly reflect concerted behavior, rather than unilateral conduct. Unilateral decisions to rebuke an agreement or breach a contract do not give rise to antitrust infringement; however, collaborative efforts to boycott and price-fix offend Section 1.

Defendants also claim Plaintiff cloaks a contract claim in an antitrust claim. (See Docket No. 34 at 7-10.) The court disagrees. Plaintiff poses a question arising under federal law. Under the Sherman Act, "liability may be established by proof of either an unlawful purpose or an anti-competitive effect." Summit Health v. Pinhas, 500 U.S. 322, 330 (1991) (quoting McLain v. Real Estate Bd. of New Orleans, Inc., 444 U.S. 232, 243 (1980)). As previously discussed, Plaintiff's pleadings sufficiently address physician price-fixing and boycotting. Plaintiff's complaint satisfactorily alleges consequent injuries to itself and the community due to Defendants' refusal to treat certain patients. See Podiatrist Ass'n, F.3d at 12; Docket No. 1 at ¶ 31, 38-40, 51-57.

III. Conclusion

For the reasons set forth above, the court **DENIES** Defendant's Motion to Dismiss (Docket No. 34).

SO ORDERED.

In San Juan, Puerto Rico this 17th day of September, 2012.

s/ Gustavo A. Gelpí

GUSTAVO A. GELPI

United States District Judge