STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

BUFFALO EMERGENCY ASSOCIATES, LLP,
EXIGENCE MEDICAL OF BINGHAMTON, PLLC,
EXIGENCE MEDICAL OF JAMESTOWN, PLLC,
EXIGENCE MEDICAL OFOLEAN, PLLC,
EMERGENCY CARE SERVICES OF NY, PC,
EMERGENCY PHYSICIAN SERVICES OF NY, PC, BENCH DECISION

Plaintiffs,

vs. Index #: 810915/2019

AETNA HEALTH, INC., AETNA HEALTH
INSURANCE COMPANY OF NEW YORK, and
AETNA LIFE INSURANCE COMPANY,

Defendants.

Defendants move to dismiss the Plaintiff's complaint on two separate grounds. First, that the complaint must be dismissed pursuant to CPLR 3211(a)(5) inasmuch as that the claims asserted are barred by the doctrine of res judicata. Second, that the complaint should be dismissed pursuant to CPLR 3211(a)(7) for failing to state a cause of action. Plaintiffs maintain that the three causes of action, breach of implied-in-fact contract, unjust enrichment, and declaratory judgment pursuant to CPLR 3001 were pled properly and are not barred by res judicata.

Here, Plaintiffs are a professional emergency medicine group that staff hospitals in emergency rooms. Defendants insure, operate and administer health plans in New York. The Plaintiff's are non-participatory providers meaning that

they do not have an agreement with Aetna for reimbursement of services provided. Aetna maintains it has agreements only with its members to pay a set amount of billed charges for any services that are covered under the applicable health care plan. Plaintiff's maintain that Defendants reimbursements are not sufficient relative to the services provided to their members and, as such, are paying their providers substantially less than what they are otherwise obligated to pay.

Defendant's maintain that Plaintiff's are barred from bringing this action, as the claims were previously litigated in New York County Supreme Court and disposed of in the Appellate Division, First Department. In a nearly identical action commenced in New York County, Plaintiff's asserted three causes of action, breach of an implied-in-fact contract, unjust enrichment and declaratory judgment seeking Defendants to pay the reasonable value for non-participating claims based on the "usual and customary costs" as defined by NY Financial Services Law §§603. See Buffalo Emergency Assoc. LLP v. Aetna Health, 2017 NY Slip Opinion 32462(U). It is important to note that the complaint filed in the New York County is nearly identical to the complaint before this court, wherein it pleads the same causes of action and seeks the same relief. In his opinion, Judge Sherwood held that the statute did not create a private cause of action against the Defendants and dismissed the complaint. The First Department affirmed the lower court's decision in December 2018 and held that the New

York Emergency Services and Surprise Act did not provide for a private right of action to enforce its provisions. It concluded that the lower court properly dismissed the complaint as an "improper effort to circumvent the legislative preclusion of private law suits for violation of the act." 167 A.D.3d at 462. In addition, the 1st Department ruled that the Plaintiff's claims for unjust enrichment were also deficient in that the complaint did not allege an equitable obligation running from defendants to plaintiffs. Lastly, it held that the declaratory relief must similarly fail as the court could only declare the respective legal rights of the parties based upon a given set of facts, not declare findings of fact. Id.

Thereafter, the same Plaintiff's commenced the same action in Montgomery County in May 2019. However, it was voluntarily discontinued on August 19, 2019. The present action was filed in Erie County on August 27, 2019. It is worth repeating that the complaint is nearly identical to the ones filed in New York County and Montgomery County, each pled under the same theory, asserting the same causes of action, and seeking the same relief.

On a motion to dismiss for failure to state a cause of action under CPLR 3211 (a) (7), "[w]e accept the facts as alleged in the complaint as true, accord plaintiff[ ] the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory." Leon v Martinez, 84 N.Y.2d 83. "At the same time, however, allegations consisting of

bare legal conclusions . . . are not entitled to any such consideration." Simkin v Blank, 19 N.Y.3d 46. Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery. Basis Yield Alpha Fund [Master] v Goldman Sachs Group, Inc., 115 A.D.3d 128. A CPLR 3211 [a] [7]) motion is useful in disposing of actions . . . in which the plaintiff has identified a cognizable cause of action but failed to assert a material allegation necessary to support the cause of action"). Connaughton v Chipotle Mexican Grill, Inc., 29 N.Y.3d 137, 141-142 (2017).

Under the doctrine of res judicata, a party may not litigate a claim where a judgment on the merits exists from a prior action between the same parties involving the same subject matter. The rule applies not only to claims actually litigated but also to claims that could have been raised in the prior litigation. The rationale underlying this principle is that a party who has been given a full and fair opportunity to litigate a claim should not be allowed to do so again Pitcock v. Kasowitz, 910 N.Y.S.2d 765; O'Connell v. Corcoran, 1 N.Y.3d 179; Gramatan Home Invs. Corp. v. Lopez, 46 N.Y.2d 481. Under New York's transactional analysis approach to res judicata, "once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy." O'Brien v. City of Syracuse, 54 N.Y.2d 353, Matter of Reilly v.

Reid, 45 N.Y.2d 24. "*Res judicata* is designed to provide finality in the resolution of disputes," recognizing that "[c]onsiderations of judicial economy as well as fairness to the parties mandate, at some point, an end to litigation." Reilly, 45 N.Y.2d at 28.

It is certainly notable that the complaints in the New York, Montgomery and Erie County actions are virtually identical. While the present complaint, at least with respect to the unjust enrichment attempts to address the deficiencies identified by the first department, a bare assertion of an equitable argument does not in and of itself satisfy the requirements for unjust enrichment. Plaintiffs have not raised any new or novel arguments that are different from those that were previously raised. It would be inconsistent with what has already been decided to rule otherwise. As such, for the reasons set forth in the first departments decision, the Defendant's motion is granted and the complaint is dismissed.