

JUN 18 2019

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

CHERYL BRATTON, individually and on
behalf of a class of similarly situated
Montanans,

Plaintiffs,

vs.

SISTERS OF CHARITY OF
LEAVENWORTH HEALTH SYSTEM,
INC. d/b/a SCL HEALTH,

Defendant.

Case No.: DV 18-1609

Judge Gregory R. Todd

**ORDER GRANTING
DEFENDANT'S
MOTION/SUPPLEMENTAL MOTION
FOR SUMMARY JUDGMENT AND
DENYING PLAINTIFF'S
CROSS-MOTION FOR
SUMMARY JUDGMENT**

INTRODUCTION

This matter comes before the Court on Defendant Sisters of Charity of Leavenworth Health System Inc.'s (hereinafter "SCL Health") motion for summary judgment that was filed on February 19, 2019. On April 11, 2019, Cheryl Bratton (hereinafter "Bratton") responded to SCL Health's motion for judgment and filed a cross-motion for partial summary judgment as to Count II (conversion). On April 15, 2019, Bratton filed an amended complaint. On April 25, 2019, SCL Health filed a supplemental motion for summary judgment on Bratton's newly added claims. On April

1 30, 2019, Bratton filed a response to SCL Health's supplemental motion for summary
2 judgment and filed her brief in support of cross-motion for partial judgment as to Count
3 IV (money had and received) and Count V (declaratory judgment). On May 8, 2019,
4 SCL replied to Bratton's response in opposition to its motion for summary judgment,
5 and to Bratton's cross-motion for partial summary judgment on Count II (Conversion).
6 On May 28, 2019, SCL Health replied to its supplemental motion for summary
7 judgment on newly added claims and opposition to plaintiff's cross-motion for partial
8 summary judgment on counts IV (money had and received) and V (declaratory
9 judgment). On May 30, 2019, the Court held a hearing on the pending summary
10 judgment motions. The matter is now fully briefed and ripe for decision.

11 **STATEMENT OF FACTS**

12 On October 19, 2018, Bratton initiated her suit against SCL Health because she
13 took issue with the method by which SCL Health has provided refunds to her. Since
14 January 2015, SCL Health has provided patient refunds by issuing prepaid Mastercard
15 debit cards through Bank of America. SCL Health refers to this as the Patient Refund
16 Card Program. When SCL Health determines a refund is necessary, it transmits the
17 refund amount and name and contact information for the patient account at issue to
18 Bank of America. Bank of America then removes the appropriate funds from SCL
19 Health's depository account, creates and loads a prepaid debit card with the amount of
20 the refund, and sends the Patient Refund Card to the patient or guarantor. Funds
21 associated with the Patient Refund Card are then held in a separate account from SCL
22 Health's depository account. The Patient Refund Card is attached to a Bank of America
23 card carrier that bears SCL Health's logo. The patient is provided information on how to
24 activate and use the card without assessing fees. The Patient Refund Card provides
25 patients with a Bank of America customer service number to call if the patient has any

1 questions about the card. If the patient does not wish to receive a Patient Refund Card,
2 a paper check can be issued free of charge to the cardholder upon request.

3 Bratton received services at a SCL Health facility in Montana in 2018. SCL
4 Health billed the insurer on file for Bratton for the services she received. SCL Health
5 billed Bratton for the remaining balance that was left on her account after her insurer
6 provided payment. SCL Health received payment on Bratton's behalf from a secondary
7 insurer after Bratton had made the remaining balance payment. The remaining balance
8 was \$12.75. SCL Health authorized Bank of America to issue a Patient Refund Card to
9 Bratton in the amount of \$12.75. Bratton's Patient Refund Card had an expiration date
10 of July 2021, and Bratton had activated her card on August 21, 2018. In December of
11 2018, Bratton had been issued another Patient Refund Card in the amount of \$15.00.
12 Bratton did not request a reissuance of refund in the form of a check for these Patient
13 Refund Cards. The total amount refunded to Bratton through the two Patient Refund
14 Cards provided by Bank of America was \$27.75.

15 Bratton argued that she never consented to allow SCL Health to give any
16 refundable money to Bank of America. Bratton argued that she never consented to
17 SCL Health sharing her private information with Bank of America. Bratton argued that
18 the refund program SCL Health uses through Bank of America is overly burdensome
19 because in order to access the funds on the Patient Refund Card, to request a check in
20 lieu of the Patient Refund Card, or to even know the amount on the Patient Refund
21 Card, she must activate the card by providing personal information to Bank of America.

22 Bratton filed her suit against SCL Health and argued the following counts: Count
23 I-Equitable Constructive Trust; Count II-Conversion; Count III-Unjust Enrichment;
24 Count IV-Unfair Trade Practices and Consumer Protection Act; Count V-Money Had
25

1 and Received; and Count VI-Declaratory Judgment and Injunctive Relief. Bratton also
2 brought a Putative Class Action claim in her complaint.

3 In SCL Health's brief in support of summary judgment, it argued that Bratton's
4 conversion claim fails because Bratton was not deprived of her money since she had
5 unfettered access to the money. SCL Health argued that Bratton's unjust enrichment
6 claim and constructive trust claims both fail because SCL Health did not receive any
7 benefit conferred by Bratton. And SCL Health argued that Bratton's consumer
8 protection act claim fails because Bratton cannot prove she sustained an ascertainable
9 loss. In SCL Health's supplemental motion for summary judgment, SCL Health argued
10 that Bratton's money had and received claim fails as a matter of law, and her
11 declaratory judgment claim fails because she was not deprived of her money.

12 On May 30, 2019, the Court held a hearing over both parties' requests for
13 summary judgment. During the hearing, SCL Health and Bratton reiterated their
14 arguments made in their briefs. SCL Health pressed its argument that the Patient
15 Refund Card Program has become a popular business method to refund money to
16 individuals, because it gets the refund to an individual quicker, and the refund cards
17 can be used anywhere a standard debit or credit card can be used.

18 SCL Health reasserted that if a patient does not want the Patient Refund Card,
19 the patient can contact Bank of America to have a check issued to him or her at no
20 charge. SCL Health argued any unclaimed funds escheat directly to the State of
21 Montana after the specified period of time runs and that it does not receive the
22 refunded amount if it has not been utilized by the patient.

23 During the hearing Bratton restated her argument that the agreement between
24 SCL Health and Bank of America violated the agreement between she and SCL
25 Health, because she did not consent to SCL Health using Bank of America to refund

1 her money. Bratton argued that, without consent, SCL Health could not legally give
2 Bank of America her money in order for Bank of America to process her refund. Bratton
3 further argued that because SCL Health gave her refund to Bank of America instead of
4 giving the refunded money to her, SCL Health breached its duty owed to her. Bratton
5 argued that her an equitable remedy does not need a party to have done something
6 wrong, so even if the Court finds that SCL Health did not act in the wrong the Court
7 should still find that SCL Health has not returned Bratton's money and find for her
8 unjust enrichment, constructive trust, and money had and received claims.

9 LEGAL STANDARD

10 Summary judgment should be rendered when the pleadings, the discovery and
11 disclosure materials on file, and any affidavits show that there is no genuine issue of
12 material fact and that the moving party is entitled to judgment as a matter of law. Mont.
13 R. Civ. P. 56(c). Summary judgment is intended to encourage judicial economy by
14 eliminating unnecessary trials in which no genuine issue of fact is present. *Belcher v.*
15 *Department of State Lands*, 228 Mont. 252, 355, 742 P.2d 475 (1987) (citation
16 omitted).

17 The moving party bears the burden of establishing both an absence of any
18 genuine issue of material fact and its entitlement to judgment as a matter of law. *Clover*
19 *Leaf Dairy v. State*, 285 Mont. 380, 385, 948 P.2d 1164, 1168 (1997). Once the moving
20 party meets its burden, the opposing party must present substantial evidence raising a
21 genuine issue of material fact. *Corporate Air v. Edwards Jet Ctr. Mont. Inc.*, 2008 MT
22 283, ¶ 25, 345 Mont. 336, 190 P.3d 1111 (citations omitted); *Steinback v. Bankers Life*
23 *& Cas. Co.*, 2000 MT 316, ¶ 11, 302 Mont. 483, 15 P.3d 872 (citations omitted). The
24 opposing party must then prove by more than mere denial and speculation that there is
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1 a genuine issue for trial. *Bruner v. Yellowstone County*, 272 Mont. 261, 264, 900 P.2d
2 901, 903 (1995).

3 All reasonable inferences that can be drawn from the offered proof must be
4 drawn in favor of the opposing party. *Stanley L. & Carolyn M. Watkins Trust v. Lacosta*,
5 2004 MT 144, ¶ 16, 321 Mont. 432, 92 P.3d 620. The Montana Supreme Court has
6 repeatedly held that "summary judgment is an extreme remedy and should never be
7 substituted for a trial if a factual controversy exists." *Williams v. Plum Creek Timber*
8 *Co.*, 2011 MT 271, ¶ 41, 362 Mont. 368, 264 P.3d 1090 (citing *Spinler v. Allen*, 1999
9 MT 160, ¶ 16, 295 Mont. 139, 983 P.2d 348).

10 Partial summary judgment is appropriate where no material facts are at issue
11 and the moving party is entitled to judgment as a matter of law. Mont. R. Civ. P. 56(d).
12 The court should determine what material facts are not genuinely at issue by
13 examining the pleadings and evidence before it and by interrogating the attorneys. *Id.*

14 DISCUSSION

15 SCL Health argued that all of Bratton's claims are subject to summary judgment
16 because the facts regarding the Patient Refund Card Program precluded Bratton from
17 establishing the elements of her claims. Bratton argued that SCL Health failed to
18 recognize the genuine issue of material facts presented in its claims. Bratton also
19 argued that the Court should grant summary judgment to her conversion claim, to her
20 money had and received claim, and her declaratory judgment claim. SCL Health
21 argued the civil theft claims depend on whether consent was needed for SCL Health to
22 allow Bank of America to send out the Patient Refund Cards, and whether consent
23 existed between Bratton and SCL Health. Bratton argued that due to the agreement
24 between SCL Health and Bratton, SCL Health needed her consent for it to transfer its
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1 contractual obligation to Bank of America regarding the refunding her money. Mont.
2 Code Ann. § 28-1-1002.

3 **I. Bratton's Conversion Claim**

4 "Conversion has been defined as a distinct act of dominion wrongfully exerted
5 over one's property in denial of, or inconsistent with, the owner's right." *Gebhardt v.*
6 *D.A. Davidson & Co.*, 203 Mont. 384, 389, 661 P.2d 855, 858 (1983). To succeed on a
7 conversion claim, Bratton must prove: (1) her ownership and right of possession of the
8 funds; (2) its conversion by SCL Health, meaning a distinct act of dominion wrongfully
9 exerted over Bratton's property in denial of, or inconsistent with Bratton's right, or an
10 unauthorized assumption of dominion over personal property in hostility to Bratton's
11 right of ownership; and (3) resulting damages. *Kingman v. Weightman*, 2017 MT 224,
12 ¶12, 388 Mont. 481, 402 P.3d 1196. SCL Health and Bratton both requested a
13 summary judgment ruling on the conversion claim.

14 SCL Health argued that Bratton cannot show that SCL Health converted any
15 portion of her refunds, whether through assessment fees or by retention of unused
16 funds after expiration of her cards. SCL Health argued that Bratton has had full access
17 to her funds at all times since the issuance of both her Patient Refund Cards. SCL
18 Health stated that Bratton can access her funds on the cards without incurring fees at
19 any bank that accepts Mastercard, at numerous points of sale, at any of the nineteen
20 Allpoint ATMs in Billings, Montana, or by requesting that Bank of America issue her a
21 check for any unused funds. SCL Health argued that Bratton failed to establish how
22 she was deprived of her right to possession of and use of her funds, and any actual
23 damages that she has suffered. SCL Health also argued that Bratton was required to
24 demand the return of her refund and SCL Health must have refused to return her
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1 refund, since SCL Health lawfully acquired possession of Bratton's money. See
2 *Beyerlein v. Whitcomb*, 95 Mont. 293, 298, 26 P.2d 349, 350 (1933).

3 Bratton argued the first element of conversion is met because there is no
4 question regarding her ownership of the refund. Bratton argued that the second
5 element of conversion is met because SCL Health gave her refund to Bank of America
6 without her consent, thereby exercising dominion over her refund. And Bratton argued
7 the third element of conversion is met because she suffered damages due to SCL
8 Health giving control of her refund to Bank of America instead of giving her the refund.
9 Bratton argued that SCL Health's reliance on *Feller v. First Interstate*, 2013 MT 90, 369
10 Mont. 444, 299 P.3d 338, regarding its argument that she suffered no damages was
11 incorrect. The defendant in *Feller* returned Feller's full escrow account balance and
12 included ten percent interest. *Feller*, ¶29. Bratton argued that SCL Health has
13 committed conversion since she has not received her money, or her money with
14 interest, and has suffered damages based on the findings the *Feller* Court made.
15 Bratton also argued that SCL Health's reliance on *Beyerlein v. Whitcomb* is misplaced,
16 because she never consented to allowing SCL Health give her money to Bank of
17 America. Bratton therefore argued that a demand and refusal was not required.

18 The Court agrees that there is no dispute regarding Bratton's ownership of the
19 money. However, the Court finds that SCL Health did not commit a conversion when
20 Bank of America issued the two Patient Refund Cards. The Court finds that Bank of
21 America issued Bratton's refund from a general account because SCL Health sends a
22 spread sheet of patients who overpaid, or double paid, medical bills to Bank of
23 America, and Bank of America issues the Patient Refund Card by taking funds out of
24 SCL Health's account. Upon SCL Health's discovery that a patient is due a refund, a
25 debtor and creditor relationship is created between SCL Health and the patient.

1 An action in conversion cannot lie against a general account as there can be no
2 conversion of a debt. See *Free v. Elberson*, 157 Mont. 424, 435, 486 P.2d 857, 862
3 (Mont. 1971); *In re Wal-Mart & Hour Empl. Practices Litig.*, 490 F. Supp.2d 1091, 2007
4 U.S. Dist. LEXIS 38075; *Temmen v. Kent-Brown Chevrolet Co.*, 227 Kan. 45, 605 P.2d
5 95, 1980 Kan. LEXIS 201; *Autoville v. Friedman*, 510 P.2d 400, 20 Ariz. App. 89; 1973
6 Ariz. App. LEXIS 635. Where there is no obligation to return identical money, but only a
7 relationship of debtor and creditor, an action for conversion of the funds representing
8 the indebtedness will not lie against the debtor. Am. Jur. 2d Conversion § 8; *ADT Corp.*
9 *v. DaimlerChrysler Corp.*, 261 F. Supp.2d 887, 2003 U.S. Dist. LEXIS 7883. Therefore,
10 the Court finds that there was no conversion. The Court not only finds that SCL Health
11 refunded Bratton her money, but that the relationship between Bratton and SCL Health
12 was a debtor and creditor relationship, and there can be no conversion of a debt. The
13 inconvenience Bratton has argued regarding the Patient Refund Card is not grounds
14 for a conversion claim.

15 II. Consent was not Needed for the Patient Refund Card

16 Bratton argued that SCL Health needed its consent in order to transfer the duty
17 of refunding her money to Bank of America. SCL Health argued that it did not transfer
18 any contractual or quasi-contractual duty to Bank of America, but instead authorized its
19 bank to effectuate the transfer of currency. SCL Health argued that because consent
20 was not needed to have its bank send a refund from its general account, it did not
21 breach its contract with Bratton. SCL Health further argued that, under the
22 Restatement (Second) of Contracts § 318 (Am. Law. Inst. 1981), it was not precluded
23 from delegation of its duties because it remained liable for any breach that may have
24 resulted. SCL Health argued that Bratton received her refund through a regulated
25 payment device that provides access to the refunded money, and that SCL Health's

1 obligation to refund Bratton's money had been performed. Bratton argued that SCL
2 Health did not follow the federal regulation mandates regarding disclosures of fees and
3 card expiration. SCL Health argued that the Patient Refund Cards are not marketed to
4 the public nor purchased by consumers, and that the federal regulations Bratton cited
5 to are inapplicable because they only concern payroll cards. See Consumer Financial
6 Protection Bureau, CFPB Bulletin 2013-10 (September 12, 2013) (discussing
7 Regulation E provisions applicable to payroll cards).

8 "Where payment or offer of payment of money is made a condition of an
9 obligor's duty, payment or offer of payment in any manner current in the ordinary
10 course of business satisfies the requirement unless the obligee demands payment in
11 legal tender and gives any extension of time reasonably necessary to procure it."
12 Section 249 of the Restatement (Second) of Contracts. Here, Bratton did not request
13 her refund be provided in legal tender. Use of other methods of payments other than
14 legal tender are sufficient to satisfy a monetary obligation. See *Frandsen v. Oasis*
15 *Petroleum N. Am., LLC*, 870 F.Supp.2d 726, 731 (D.N.D. 2012).

16 The Court finds that SCL Health did not need Bratton's consent to have its bank
17 send Bratton a Patient Refund Card. SCL Health did not transfer its duty to Bank of
18 America. SCL Health merely had Bank of America withdraw money from its general
19 account and send the Patient Refund Card to Bratton. The Court finds that SCL
20 Health's authorization for Bank of America to withdraw money from SCL Health's
21 account to send to Bratton in the form of a Patient Refund Card is similar to the
22 authorization of a wire transfer or cashier's check. SCL Health would not need
23 Bratton's consent regarding a wire transfer or cashier's check, and the Court does not
24 find consent by Bratton necessary just because SCL Health refunded Bratton's money
25 in a manner Bratton found inconvenient.

III. Bratton's Unjust Enrichment and Constructive Trust Claims

Unjust enrichment is an equitable claim for restitution to prevent or remedy inequitable gain by another. *N. Cheyenne Tribe v. Roman Catholic Church ex rel. Great Falls/Billings Dioceses*, 2013 MT 24, ¶¶36-39, 368 Mont. 330, 269 P.3d 450; Restatement (Third) of Restitution and Unjust Enrichment §1 (2011). In order for Bratton to prevail on her unjust enrichment claim, and by extension her constructive trust claim, Bratton must show (1) she conferred a benefit upon SCL Health, (2) that SCL Health appreciated or had knowledge of the benefit, and (3) SCL Health accepted or retained the benefit under circumstances making it inequitable for SCL Health to retain the benefit without payment of its value. *Volk v. Goesser*, 2016 MT 61, ¶45, 382 Mont. 382, 367 P.3d 378. Forms of restitution available upon proof of an unjust enrichment claim include direct restoration of the benefit conferred or gained, or imposition of a constructive trust to the same effect. *Id.* The measure of restitution will be the amount SCL Health inequitably gained. *N. Cheyenne Tribe*, ¶38.

SCL Health argued that it was not unjustly enriched because it did not retain control over Bratton's refund. SCL Health argued that Bratton has retained full access to her refund and may retrieve her money on her Patient Refund Cards at any time, without incurring fees. SCL Health also argued that it will not receive the benefit of the money if Bratton never uses the Patient Refund Cards, or if she requests Bank of America to reimburse her by a check, because Bank of America will deposit any remaining card balance with the State of Montana after the five-year statutorily prescribed dormancy period as required by law under Mont. Code Ann. § 70-9-803(q). SCL Health further argued that if any of Bratton's remaining balance on her cards were to escheat to the State of Montana, Bratton could still retrieve her money from

1 appropriate state authority. Mont. Code Ann. § 70-9-815 (specifying procedure for
2 reclaiming unclaimed property escheated to the State of Montana).

3 Bratton argued that there are still disputed issues of material facts regarding the
4 benefits SCL Health received from sending Bratton and other patients' monies to Bank
5 of America to have it pay the refunds. Bratton argued that SCL Health received cost
6 savings by switching from issuing refund checks in-house to providing Patient Refund
7 Cards through Bank of America. Bratton further argued that it is unknown whether
8 loans that SCL Health received from Bank of America were tied at all to its participation
9 in the Patient Refund Card Program.

10 Unjust enrichment does not necessarily require proof of a wrongful act or
11 conduct. *Volk*, ¶¶45 and 50. The *Volk* Court affirmed the imposition of a constructive
12 trust where the defendant had done nothing wrong. *Id.* Unjust enrichment merely
13 requires proof that a party unjustly gained something of value, regardless of wrongful
14 conduct. *N. Cheyenne Tribe*, ¶38. "A constructive trust arises when a person holding
15 title to property is subject to an equitable duty to convey it to another on the ground that
16 the person holding title would be unjustly enriched if the holder were permitted to retain
17 it." Mont. Code Ann. § 72-38-123.

18 The Court finds that SCL Health was not unjustly enriched. The Court does find
19 that a benefit was given to SCL Health when Bratton paid SCL Health for the remaining
20 balance before Bratton's secondary insurance covered the same bill Bratton had paid
21 after her primary insurance covered the bulk of the hospital bill. The Court also finds
22 that SCL Health had knowledge of the alleged benefit after it attempted to refund
23 Bratton her money. However, SCL Health did not retain the benefit, because SCL
24 Health authorized Bank of America to issue Bratton a refund. The Court finds that
25 Bratton cannot meet all the elements to support her unjust enrichment claim. The Court

1 will therefore grant SCL Health's motion for summary judgment against Bratton's unjust
2 enrichment claim. The Court will also grant SCL Health's motion for summary judgment
3 against Bratton's constructive trust claim as well, because SCL Health was not unjustly
4 enriched.

5 **IV. Bratton's Consumer Protection Claim**

6 Bratton argued that SCL Health violated the Montana Consumer Protection Act
7 (hereinafter "MCPA"). To succeed on her MCPA claim, Bratton must prove that: (1) she
8 is a consumer as defined in Mont. Code Ann. § 30-14-102(1); (2) she suffered an
9 ascertainable loss of money or property, real or personal; and (3) her loss was caused
10 by SCL Health's use or employment of a method, act, or practice declared unlawful by
11 Montana Code Annotated § 30-14-103. *Higgins v. First Horizon National Corporation*,
12 2018 U.S. Dist. LEXIS 38331*, No. CV-15-101-GF- BMM, 2018 WL 1203474, at *30
13 (D. Mont. Mar. 8, 2018). The MCPA is broad in scope and is liberally construed with a
14 view to affect its object and promote justice. *Baird v. Northwest Bank*, 225 Mont. 317,
15 327, 843 P.2d 327, 333 (1992). The MCPA prohibits unfair or deceptive acts or
16 practices in the conduct of any trade or commerce. *Doherty v. Fed. Nat'l Mortg. Ass'n.,*
17 *& CitiMortgage, Inc.*, 2014 MT 56, ¶ 21, 374 Mont. 151, 319 P.3d 1279 (2014).

18 SCL Health argued that Bratton's claim fails a matter of law because she cannot
19 show she sustained an ascertainable loss. Generally, the ascertainable loss element is
20 satisfied by an identifiable loss of money or property. *Jacobson v. Bayview Loan*
21 *Servicing, LLC*, 2016 MT 101, ¶ 46, 383 Mont. 257, 371 P.3d 397. SCL Health argued
22 that Bratton does not allege that she sustained an ascertainable loss because of SCL
23 Health's alleged wrongdoing. SCL Health argued that Bratton does not claim she
24 incurred a fee in using or accessing the funds on her Patient Refund Cards, and she
25 cannot prove that such fees will necessarily be incurred. SCL Health also argued that

1 Bratton cannot establish any ascertainable loss of the refunded amount, because her
2 Patient Refund Cards remain available for her use.

3 Bratton argued she still has not received any portion of the \$27.75 that SCL
4 Health owes her, and that the only way she can get her refund is by creating a Card
5 Account with Bank of America, which, she argued, would require her to waive her
6 rights, including her constitutional right under federal and state law to access the courts
7 of Montana. Bratton also argued that SCL Health has not stated whether the account in
8 which her money is being held is an interest-bearing account. Bratton further argued
9 that the Patient Refund Card does not bear interest for her, but questions whether it
10 bears interest for Bank of America. Bratton therefore argued that genuine issues of
11 material fact exist to the amount of loss that she has suffered.

12 The Court finds that Bratton is a consumer as defined by Mont. Code Ann. § 30-
13 14-102 (Bratton purchased services from SCL Health for medical reasons). However,
14 the Court finds that Bratton has not suffered an ascertainable loss. SCL Health
15 refunded Bratton's money. SCL Health's practice of authorizing Bank of America to
16 withdraw money from its general account to refund patients who have overpaid is not a
17 deceptive business tactic. *See Doherty*, ¶21. The Court will grant SCL Health's motion
18 for summary judgment against Bratton's MCPA claim.

19 **V. Bratton's Money Had and Received Claim**

20 Montana case law has not dealt with money had and received in over five
21 decades. The Montana Rules of Civil Procedure Form 7, along with past Montana case
22 law, shows that Bratton must prove SCL Health received money to be paid to her, but it
23 failed to do so. *See* Mont. R. Civ. P. Form 7 (setting forth the sole allegation that
24 "Defendant owes plaintiff \$10,000 for money had and received from one G.H. on June
25 1, 1959, to be paid by defendant to plaintiff); *Donovan v. McDevitt*, 36 Mont. 61, 92

1 P.2d 49 (1907) (recognizing that plaintiff stated a claim for money had and received by
2 alleging that defendant collected rent on plaintiff's property, but failed to apply that rent
3 toward discharge of debt defendant owed plaintiff, as the parties agreed). This
4 particular form of action was invented by common law judges to obtain relief from the
5 common law procedure which afforded no remedy. *Grady v. Livingston*, 115 Mont. 47,
6 141 P.2d 346 (1943). Similarly situated common-law jurisdictions have parallel claim
7 requirements for money had and received. *Hunt v. Baldwin*, 68 S.W.3d 117, 132 (Tex.
8 App. 2001) ("cause of action for money had and received arises when the defendant
9 obtains money which in equity and good conscience belongs to the plaintiff); *Mains v.*
10 *City Title Ins. Co.*, 212 P.2d 873 (Cal. 1949) ("wherever one person has received
11 money which belongs to another and which in equity and good conscience...should be
12 returned").

13 SCL Health argued that it did not receive money that Bratton was entitled to, or
14 that was to be paid to Bratton. SCL Health argued that Bratton paid the \$27.75 bill for
15 healthcare services SCL Health provided, and SCL Health applied those funds to
16 Bratton's account. SCL Health further argued that, after identifying the balance on
17 Bratton's account, SCL Health refunded Bratton the amount she overpaid. SCL Health
18 therefore argued that it had not deprived Bratton of her money.

19 Bratton argued that SCL Health owes her \$27.75. Bratton argued that SCL
20 Health has tried to impose elements and technicalities not contained in the simplest
21 action known to law. Bratton further argued that summary judgment lies for the
22 common law claim of money had and received, and that the Court in equity should
23 grant partial summary judgment for her money had and received claim because it is
24 simply a claim for civil restitution.

1 The Court finds that Bratton paid the remaining balance of her medical bills,
2 which came to \$27.75, and that her insurers ended up covering each bill after Bratton
3 made her payments. However, the Court finds that SCL Health refunded Bratton her
4 money via the Patient Refund Card provided through Bank of America. Therefore, SCL
5 Health paid Bratton the money it owed her. The Court will grant SCL Health summary
6 judgment for Bratton's money had and received claim.

7 **VI. Bratton's Declaratory Judgment Claim**

8 The Court has the "power to declare rights, status, and other legal relations
9 whether or not further relief is or could be claims." Mont. Code Ann. § 27-8-201. The
10 Montana Supreme Court has found that a district court under Mont. Code Ann. § 27-8-
11 201 can declare that a company is obligated to pay money. *Ridley v. Guaranty Nat'l*
12 *Ins. Co.*, 286 Mont. 325, 332, 951 P.2d 987, 991 (1997).

13 SCL Health argued that Bratton's claim for declaratory judgment must fail
14 because her argument rests on her being deprived of her money to which she has had
15 unfettered access. SCL Health argued that Bratton can retrieve her money at any time.
16 Bratton argued that the Patient Refund Cards from Bank of America are not the
17 equivalent of cash, that SCL Health cannot give her money to Bank of America without
18 prior consent, that SCL Health is legally obligated to refund her money, and that SCL
19 Health cannot mandate that she contract with Bank of America.

20 The Court finds SCL Health refunded Bratton's money. The Court finds that
21 Bratton has had full access to her money and has not been deprived of her money as
22 she alleged. The Court does not find that SCL Health was mandating Bratton to
23 contract with Bank of America by issuing the Patient Refund Card. The Court will grant
24 SCL Health's request for summary judgment for Bratton's declaratory judgment claim.
25

1 **CONCLUSION AND ORDER**

2 The Court finds SCL Health refunded Bratton's money, and that Bratton has had
3 unfettered access to her money. Bratton's argument of inconvenience is not grounds
4 for a suit. The Court finds for SCL Health and will grant its motion and supplemental
5 motion for summary judgment in its entirety.

6 **IT IS HEREBY ORDERED** that Defendant's motion and supplemental motion for
7 summary judgment are **GRANTED** and Plaintiff's cross motions for partial summary
8 judgment are **DENIED**

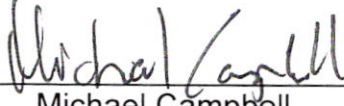
9 **DATED AND ORDERED** this 13th day of June, 2019.

10
11 
12 **HON. GREGORY R. TODD**, District Court Judge
13 DV 18-1609

14 cc. Kathleen L. DeSoto, Attorney for Defendant
15 Kathryn A. Reily, (Pro Hac Vice) Attorney for Defendant
16 John Heenan, Attorney for Plaintiff
17 Joe Cook, Attorney for Plaintiff

18 **CERTIFICATE OF SERVICE**

19 This is to certify that the foregoing was
20 Caused to be served upon the parties or their
21 Attorneys of record at their last-known
22 Address on this 13th day of June, 2019

23 By 
24 Michael Campbell
25 Law Clerk to HON. GREGORY R. TODD